107TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 107–51
Part 1

COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001

MAY 1, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 10]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 10) to provide for pension reform, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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72–093

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Comprehensive Retirement Security and Pension Reform Act of 2001".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—INDIVIDUAL RETIREMENT ACCOUNTS

SEC. 101. MODIFICATION OF IRA CONTRIBUTION LIMITS.

(a) INCREASE IN CONTRIBUTION LIMIT.—

(1) IN GENERAL.—Paragraph (1)(A) of section 219(b) (relating to maximum amount of deduction) is amended by striking "$2,000" and inserting "the deductible amount".

(2) DEDUCTIBLE AMOUNT.—Section 219(b) is amended by adding at the end the following new paragraph:

"(5) DEDUCTIBLE AMOUNT.—For purposes of paragraph (1)(A)—

"(A) IN GENERAL.—The deductible amount shall be determined in accordance with the following table:

"For taxable years beginning in:	**The deductible amount is:**
2002	$3,000
2003	$4,000
2004 and thereafter	$5,000.

"(B) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS 50 OR OLDER.—In the case of an individual who has attained the age of 50 before the close of the taxable year, the deductible amount for taxable years beginning in 2002 or 2003 shall be $5,000.

"(C) COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2004, the $5,000 amount under subparagraph (A) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2003' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $500, such amount shall be rounded to the next lower multiple of $500.".

(b) CONFORMING AMENDMENTS.—

(1) Section 408(a)(1) is amended by striking "in excess of $2,000 on behalf of any individual" and inserting "on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)".

(2) Section 408(b)(2)(B) is amended by striking "$2,000" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(3) Section 408(b) is amended by striking "$2,000" in the matter following paragraph (4) and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(4) Section 408(j) is amended by striking "$2,000".

(5) Section 408(p)(8) is amended by striking "$2,000" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

TITLE II—EXPANDING COVERAGE

SEC. 201. INCREASE IN BENEFIT AND CONTRIBUTION LIMITS.

(a) DEFINED BENEFIT PLANS.—

(1) DOLLAR LIMIT.—

(A) Subparagraph (A) of section 415(b)(1) (relating to limitation for defined benefit plans) is amended by striking "$90,000" and inserting "$160,000".

(B) Subparagraphs (C) and (D) of section 415(b)(2) are each amended by striking "$90,000" each place it appears in the headings and the text and inserting "$160,000".

(C) Paragraph (7) of section 415(b) (relating to benefits under certain collectively bargained plans) is amended by striking "the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$90,000'" and inserting "one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$160,000'".

(2) LIMIT REDUCED WHEN BENEFIT BEGINS BEFORE AGE 62.—Subparagraph (C) of section 415(b)(2) is amended by striking "the social security retirement age" each place it appears in the heading and text and inserting "age 62" and by striking the second sentence.

(3) LIMIT INCREASED WHEN BENEFIT BEGINS AFTER AGE 65.—Subparagraph (D) of section 415(b)(2) is amended by striking "the social security retirement age" each place it appears in the heading and text and inserting "age 65".

(4) COST-OF-LIVING ADJUSTMENTS.—Subsection (d) of section 415 (related to cost-of-living adjustments) is amended—

(A) by striking "$90,000" in paragraph (1)(A) and inserting "$160,000"; and

(B) in paragraph (3)(A)—

(i) by striking "$90,000" in the heading and inserting "$160,000"; and

(ii) by striking "October 1, 1986" and inserting "July 1, 2001".

(5) CONFORMING AMENDMENTS.—

(A) Section 415(b)(2) is amended by striking subparagraph (F).

(B) Section 415(b)(9) is amended to read as follows:

"(9) SPECIAL RULE FOR COMMERCIAL AIRLINE PILOTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot, if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62, paragraph (2)(C) shall be applied by substituting such age for age 62.

"(B) INDIVIDUALS WHO SEPARATE FROM SERVICE BEFORE AGE 60.—If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(C) shall apply.".

(C) Section 415(b)(10)(C)(i) is amended by striking "applied without regard to paragraph (2)(F)".

(b) DEFINED CONTRIBUTION PLANS.—

(1) DOLLAR LIMIT.—Subparagraph (A) of section 415(c)(1) (relating to limitation for defined contribution plans) is amended by striking "$30,000" and inserting "$40,000".

(2) COST-OF-LIVING ADJUSTMENTS.—Subsection (d) of section 415 (related to cost-of-living adjustments) is amended—

(A) by striking "$30,000" in paragraph (1)(C) and inserting "$40,000"; and

(B) in paragraph (3)(D)—

(i) by striking "$30,000" in the heading and inserting "$40,000"; and

(ii) by striking "October 1, 1993" and inserting "July 1, 2001".

(c) QUALIFIED TRUSTS.—

(1) COMPENSATION LIMIT.—Sections 401(a)(17), 404(l), 408(k), and 505(b)(7) are each amended by striking "$150,000" each place it appears and inserting "$200,000".

(2) BASE PERIOD AND ROUNDING OF COST-OF-LIVING ADJUSTMENT.—Subparagraph (B) of section 401(a)(17) is amended—

(A) by striking "October 1, 1993" and inserting "July 1, 2001"; and

(B) by striking "$10,000" both places it appears and inserting "$5,000".

(d) ELECTIVE DEFERRALS.—

(1) IN GENERAL.—Paragraph (1) of section 402(g) (relating to limitation on exclusion for elective deferrals) is amended to read as follows:

"(1) IN GENERAL.—

"(A) LIMITATION.—Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar amount.

"(B) APPLICABLE DOLLAR AMOUNT.—For purposes of subparagraph (A), the applicable dollar amount shall be the amount determined in accordance with the following table:

"For taxable years beginning in calendar year:	The applicable dollar amount:
2002	$11,000
2003	$12,000
2004	$13,000
2005	$14,000
2006 or thereafter	$15,000.".

(2) COST-OF-LIVING ADJUSTMENT.—Paragraph (5) of section 402(g) is amended to read as follows:

"(5) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.".

(3) CONFORMING AMENDMENTS.—

(A) Section 402(g) (relating to limitation on exclusion for elective deferrals), as amended by paragraphs (1) and (2), is further amended by striking paragraph (4) and redesignating paragraphs (5), (6), (7), (8), and (9) as paragraphs (4), (5), (6), (7), and (8), respectively.

(B) Paragraph (2) of section 457(c) is amended by striking "402(g)(8)(A)(iii)" and inserting "402(g)(7)(A)(iii)".

(C) Clause (iii) of section 501(c)(18)(D) is amended by striking "(other than paragraph (4) thereof)".

(e) DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—

(1) IN GENERAL.—Section 457 (relating to deferred compensation plans of State and local governments and tax-exempt organizations) is amended—

(A) in subsections (b)(2)(A) and (c)(1) by striking "$7,500" each place it appears and inserting "the applicable dollar amount"; and

(B) in subsection (b)(3)(A) by striking "$15,000" and inserting "twice the dollar amount in effect under subsection (b)(2)(A)".

(2) APPLICABLE DOLLAR AMOUNT; COST-OF-LIVING ADJUSTMENT.—Paragraph (15) of section 457(e) is amended to read as follows:

"(15) APPLICABLE DOLLAR AMOUNT.—

"(A) IN GENERAL.—The applicable dollar amount shall be the amount determined in accordance with the following table:

"For taxable years beginning in calendar year:	The applicable dollar amount:
2002	$11,000
2003	$12,000
2004	$13,000
2005	$14,000
2006 or thereafter	$15,000.

"(B) COST-OF-LIVING ADJUSTMENTS.—In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under subparagraph (A) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.".

(f) SIMPLE RETIREMENT ACCOUNTS.—

(1) LIMITATION.—Clause (ii) of section 408(p)(2)(A) (relating to general rule for qualified salary reduction arrangement) is amended by striking "$6,000" and inserting "the applicable dollar amount".

(2) APPLICABLE DOLLAR AMOUNT.—Subparagraph (E) of 408(p)(2) is amended to read as follows:

"(E) APPLICABLE DOLLAR AMOUNT; COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—For purposes of subparagraph (A)(ii), the applicable dollar amount shall be the amount determined in accordance with the following table:

"For taxable years beginning in calendar year:	The applicable dollar amount:
2002	$7,000
2003	$8,000

2004	$9,000
2005 or thereafter	$10,000.

"(ii) COST-OF-LIVING ADJUSTMENT.—In the case of a year beginning after December 31, 2005, the Secretary shall adjust the $10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.".

(3) CONFORMING AMENDMENTS.—

(A) Subclause (I) of section 401(k)(11)(B)(i) is amended by striking "$6,000" and inserting "the amount in effect under section 408(p)(2)(A)(ii)".

(B) Section 401(k)(11) is amended by striking subparagraph (E).

(g) ROUNDING RULE RELATING TO DEFINED BENEFIT PLANS AND DEFINED CONTRIBUTION PLANS.—Paragraph (4) of section 415(d) is amended to read as follows:

"(4) ROUNDING.—

"(A) $160,000 AMOUNT.—Any increase under subparagraph (A) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

"(B) $40,000 AMOUNT.—Any increase under subparagraph (C) of paragraph (1) which is not a multiple of $1,000 shall be rounded to the next lowest multiple of $1,000.".

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2001.

SEC. 202. PLAN LOANS FOR SUBCHAPTER S OWNERS, PARTNERS, AND SOLE PROPRIETORS.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—Subparagraph (B) of section 4975(f)(6) (relating to exemptions not to apply to certain transactions) is amended by adding at the end the following new clause:

"(iii) LOAN EXCEPTION.—For purposes of subparagraph (A)(i), the term 'owner-employee' shall only include a person described in subclause (II) or (III) of clause (i).".

(b) AMENDMENT OF ERISA.—Section 408(d)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(d)(2)) is amended by adding at the end the following new subparagraph:

"(C) For purposes of paragraph (1)(A), the term 'owner-employee' shall only include a person described in clause (ii) or (iii) of subparagraph (A).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2001.

SEC. 203. MODIFICATION OF TOP-HEAVY RULES.

(a) SIMPLIFICATION OF DEFINITION OF KEY EMPLOYEE.—

(1) IN GENERAL.—Section 416(i)(1)(A) (defining key employee) is amended—

(A) by striking "or any of the 4 preceding plan years" in the matter preceding clause (i);

(B) by striking clause (i) and inserting the following:

"(i) an officer of the employer having an annual compensation greater than $150,000,";

(C) by striking clause (ii) and redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively; and

(D) by striking the second sentence in the matter following clause (iii), as redesignated by subparagraph (C).

(2) CONFORMING AMENDMENT.—Section 416(i)(1)(B)(iii) is amended by striking "and subparagraph (A)(ii)".

(b) MATCHING CONTRIBUTIONS TAKEN INTO ACCOUNT FOR MINIMUM CONTRIBUTION REQUIREMENTS.—Section 416(c)(2)(A) (relating to defined contribution plans) is amended by adding at the end the following: "Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph.".

(c) DISTRIBUTIONS DURING LAST YEAR BEFORE DETERMINATION DATE TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Paragraph (3) of section 416(g) is amended to read as follows:

"(3) DISTRIBUTIONS DURING LAST YEAR BEFORE DETERMINATION DATE TAKEN INTO ACCOUNT.—

"(A) IN GENERAL.—For purposes of determining—

"(i) the present value of the cumulative accrued benefit for any employee, or

"(ii) the amount of the account of any employee, such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

"(B) 5-YEAR PERIOD IN CASE OF IN-SERVICE DISTRIBUTION.—In the case of any distribution made for a reason other than separation from service, death, or disability, subparagraph (A) shall be applied by substituting '5-year period' for '1-year period'.".

(2) BENEFITS NOT TAKEN INTO ACCOUNT.—Subparagraph (E) of section 416(g)(4) is amended—

(A) by striking "LAST 5 YEARS" in the heading and inserting "LAST YEAR BEFORE DETERMINATION DATE"; and

(B) by striking "5-year period" and inserting "1-year period".

(d) DEFINITION OF TOP-HEAVY PLANS.—Paragraph (4) of section 416(g) (relating to other special rules for top-heavy plans) is amended by adding at the end the following new subparagraph:

"(H) CASH OR DEFERRED ARRANGEMENTS USING ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—The term 'top-heavy plan' shall not include a plan which consists solely of—

"(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12), and

"(ii) matching contributions with respect to which the requirements of section 401(m)(11) are met.

If, but for this subparagraph, a plan would be treated as a top-heavy plan because it is a member of an aggregation group which is a top-heavy group, contributions under the plan may be taken into account in determining whether any other plan in the group meets the requirements of subsection (c)(2).".

(e) FROZEN PLAN EXEMPT FROM MINIMUM BENEFIT REQUIREMENT.—Subparagraph (C) of section 416(c)(1) (relating to defined benefit plans) is amended—

(A) by striking "clause (ii)" in clause (i) and inserting "clause (ii) or (iii)"; and

(B) by adding at the end the following:

"(iii) EXCEPTION FOR FROZEN PLAN.—For purposes of determining an employee's years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of section 410(b)) no key employee or former key employee.".

(f) ELIMINATION OF FAMILY ATTRIBUTION.—Section 416(i)(1)(B) (defining 5-percent owner) is amended by adding at the end the following new clause:

"(iv) FAMILY ATTRIBUTION DISREGARDED.—Solely for purposes of applying this paragraph (and not for purposes of any provision of this title which incorporates by reference the definition of a key employee or 5-percent owner under this paragraph), section 318 shall be applied without regard to subsection (a)(1) thereof in determining whether any person is a 5-percent owner.".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2001.

SEC. 204. ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DEDUCTION LIMITS.

(a) IN GENERAL.—Section 404 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan) is amended by adding at the end the following new subsection:

"(n) ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DEDUCTION LIMITS.—Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a), and such elective deferrals shall not be taken into account in applying any such limitation to any other contributions.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2001.

SEC. 205. REPEAL OF COORDINATION REQUIREMENTS FOR DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Subsection (c) of section 457 (relating to deferred compensation plans of State and local governments and tax-exempt organizations), as amended by section 201, is amended to read as follows:

"(c) LIMITATION.—The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed the amount in effect under subsection (b)(2)(A) (as modified by any adjustment provided under subsection (b)(3)).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 2001.

SEC. 206. ELIMINATION OF USER FEE FOR REQUESTS TO IRS REGARDING PENSION PLANS.

(a) ELIMINATION OF CERTAIN USER FEES.—The Secretary of the Treasury or the Secretary's delegate shall not require payment of user fees under the program established under section 10511 of the Revenue Act of 1987 for requests to the Internal Revenue Service for determination letters with respect to the qualified status of a pension benefit plan maintained solely by one or more eligible employers or any trust which is part of the plan. The preceding sentence shall not apply to any request—

(1) made after the later of—

(A) the fifth plan year the pension benefit plan is in existence; or

(B) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years; or

(2) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

(b) PENSION BENEFIT PLAN.—For purposes of this section, the term "pension benefit plan" means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

(c) ELIGIBLE EMPLOYER.—For purposes of this section, the term "eligible employer" has the same meaning given such term in section 408(p)(2)(C)(i)(I) of the Internal Revenue Code of 1986. The determination of whether an employer is an eligible employer under this section shall be made as of the date of the request described in subsection (a).

(d) DETERMINATION OF AVERAGE FEES CHARGED.—For purposes of any determination of average fees charged, any request to which subsection (a) applies shall not be taken into account.

(e) EFFECTIVE DATE.—The provisions of this section shall apply with respect to requests made after December 31, 2001.

SEC. 207. DEDUCTION LIMITS.

(a) STOCK BONUS AND PROFIT SHARING TRUSTS.—

(1) IN GENERAL.—Subclause (I) of section 404(a)(3)(A)(i) (relating to stock bonus and profit sharing trusts) is amended by striking "15 percent" and inserting "20 percent".

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 404(h)(1) is amended by striking "15 percent" each place it appears and inserting "20 percent".

(b) COMPENSATION.—

(1) IN GENERAL.—Section 404(a) (relating to general rule) is amended by adding at the end the following:

"(12) DEFINITION OF COMPENSATION.—For purposes of paragraphs (3), (7), (8), and (9), the term 'compensation otherwise paid or accrued during the taxable year' shall include amounts treated as 'participant's compensation' under subparagraph (C) or (D) of section 415(c)(3).".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 404(a)(3) is amended by striking the last sentence.

(B) Clause (i) of section 4972(c)(6)(B) is amended by striking "(within the meaning of section 404(a))" and inserting "(within the meaning of section 404(a) and as adjusted under section 404(a)(12))".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2001.

SEC. 208. OPTION TO TREAT ELECTIVE DEFERRALS AS AFTER-TAX CONTRIBUTIONS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 (relating to deferred compensation, etc.) is amended by inserting after section 402 the following new section:

"SEC. 402A. OPTIONAL TREATMENT OF ELECTIVE DEFERRALS AS PLUS CONTRIBUTIONS.

"(a) GENERAL RULE.—If an applicable retirement plan includes a qualified plus contribution program—

"(1) any designated plus contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and

"(2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

"(b) QUALIFIED PLUS CONTRIBUTION PROGRAM.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified plus contribution program' means a program under which an employee may elect to make designated plus contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

"(2) SEPARATE ACCOUNTING REQUIRED.—A program shall not be treated as a qualified plus contribution program unless the applicable retirement plan—

"(A) establishes separate accounts ('designated plus accounts') for the designated plus contributions of each employee and any earnings properly allocable to the contributions, and

"(B) maintains separate recordkeeping with respect to each account.

"(c) DEFINITIONS AND RULES RELATING TO DESIGNATED PLUS CONTRIBUTIONS.—For purposes of this section—

"(1) DESIGNATED PLUS CONTRIBUTION.—The term 'designated plus contribution' means any elective deferral which—

"(A) is excludable from gross income of an employee without regard to this section, and

"(B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

"(2) DESIGNATION LIMITS.—The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of—

"(A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section), over

"(B) the aggregate amount of elective deferrals of the employee for the taxable year which the employee does not designate under paragraph (1).

"(3) ROLLOVER CONTRIBUTIONS.—

"(A) IN GENERAL.—A rollover contribution of any payment or distribution from a designated plus account which is otherwise allowable under this chapter may be made only if the contribution is to—

"(i) another designated plus account of the individual from whose account the payment or distribution was made, or

"(ii) a Roth IRA of such individual.

"(B) COORDINATION WITH LIMIT.—Any rollover contribution to a designated plus account under subparagraph (A) shall not be taken into account for purposes of paragraph (1).

"(d) DISTRIBUTION RULES.—For purposes of this title—

"(1) EXCLUSION.—Any qualified distribution from a designated plus account shall not be includible in gross income.

"(2) QUALIFIED DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified distribution' has the meaning given such term by section 408A(d)(2)(A) (without regard to clause (iv) thereof).

"(B) DISTRIBUTIONS WITHIN NONEXCLUSION PERIOD.—A payment or distribution from a designated plus account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of—

"(i) the first taxable year for which the individual made a designated plus contribution to any designated plus account established for such individual under the same applicable retirement plan, or

"(ii) if a rollover contribution was made to such designated plus account from a designated plus account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated plus contribution to such previously established account.

"(C) DISTRIBUTIONS OF EXCESS DEFERRALS AND CONTRIBUTIONS AND EARNINGS THEREON.—The term 'qualified distribution' shall not include any distribution of an excess deferral under section 402(g)(2) or any excess contribution under section 401(k)(8), and any income on the excess deferral or contribution.

"(3) TREATMENT OF DISTRIBUTIONS OF CERTAIN EXCESS DEFERRALS.—Notwithstanding section 72, if any excess deferral under section 402(g)(2) attributable to a designated plus contribution is not distributed on or before the 1st April 15 following the close of the taxable year in which such excess deferral is made, the amount of such excess deferral shall—

"(A) not be treated as investment in the contract, and

"(B) be included in gross income for the taxable year in which such excess is distributed.

"(4) AGGREGATION RULES.—Section 72 shall be applied separately with respect to distributions and payments from a designated plus account and other distributions and payments from the plan.

"(e) OTHER DEFINITIONS.—For purposes of this section—

"(1) APPLICABLE RETIREMENT PLAN.—The term 'applicable retirement plan' means—

"(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a), and

"(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

"(2) ELECTIVE DEFERRAL.—The term 'elective deferral' means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3).".

(b) EXCESS DEFERRALS.—Section 402(g) (relating to limitation on exclusion for elective deferrals) is amended—

(1) by adding at the end of paragraph (1)(A) (as added by section 201(d)(1)) the following new sentence: "The preceding sentence shall not apply to so much of such excess as does not exceed the designated plus contributions of the individual for the taxable year."; and

(2) by inserting "(or would be included but for the last sentence thereof)" after "paragraph (1)" in paragraph (2)(A).

(c) ROLLOVERS.—Subparagraph (B) of section 402(c)(8) is amended by adding at the end the following:

"If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated plus account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated plus account and a Roth IRA.".

(d) REPORTING REQUIREMENTS.—

(1) W–2 INFORMATION.—Section 6051(a)(8) is amended by inserting ", including the amount of designated plus contributions (as defined in section 402A)" before the comma at the end.

(2) INFORMATION.—Section 6047 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) DESIGNATED PLUS CONTRIBUTIONS.—The Secretary shall require the plan administrator of each applicable retirement plan (as defined in section 402A) to make such returns and reports regarding designated plus contributions (as so defined) to the Secretary, participants and beneficiaries of the plan, and such other persons as the Secretary may prescribe.".

(e) CONFORMING AMENDMENTS.—

(1) Section 408A(e) is amended by adding after the first sentence the following new sentence: "Such term includes a rollover contribution described in section 402A(c)(3)(A).".

(2) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 402 the following new item:

"Sec. 402A. Optional treatment of elective deferrals as plus contributions.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 209. AVAILABILITY OF QUALIFIED PLANS TO SELF-EMPLOYED INDIVIDUALS WHO ARE EXEMPT FROM THE SELF-EMPLOYMENT TAX BY REASON OF THEIR RELIGIOUS BELIEFS.

(a) IN GENERAL.—Subparagraph (A) of section 401(c)(2) (defining earned income) is amended by adding at the end thereof the following new sentence: "For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term 'trade or business' for purposes of section 1402 included service described in section 1402(c)(6).".

(b) SIMPLE RETIREMENT ACCOUNTS.—Clause (ii) of section 408(p)(6)(A) (defining self-employed) is amended by adding at the end the following new sentence: "The preceding sentence shall be applied as if the term 'trade or business' for purposes of section 1402 included service described in section 1402(c)(6).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 210. CERTAIN NONRESIDENT ALIENS EXCLUDED IN APPLYING MINIMUM COVERAGE REQUIREMENTS.

(a) IN GENERAL.—Subparagraph (C) of section 410(b)(3) (relating to exclusion of certain employees) is amended by inserting ", determined without regard to the reference to subchapter D in the last sentence thereof" after "section 861(a)(3)".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to plan years beginning after December 31, 2001.

TITLE III—ENHANCING FAIRNESS FOR WOMEN

SEC. 301. CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER.

(a) IN GENERAL.—Section 414 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

"(v) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER.—

"(1) IN GENERAL.—An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

"(2) LIMITATION ON AMOUNT OF ADDITIONAL DEFERRALS.—A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of—

"(A) $5,000, or

"(B) the excess (if any) of—

"(i) the participant's compensation for the year, over

"(ii) any other elective deferrals of the participant for such year which are made without regard to this subsection.

"(3) TREATMENT OF CONTRIBUTIONS.—In the case of any contribution to a plan under paragraph (1), such contribution shall not, with respect to the year in which the contribution is made—

"(A) be subject to any otherwise applicable limitation contained in section 402(g), 402(h)(2), 404(a), 404(h), 408(p)(2)(A)(ii), 415, or 457, or

"(B) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan.

"(4) APPLICATION OF NONDISCRIMINATION RULES.—

"(A) IN GENERAL.—An applicable employer plan shall not be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features if the plan allows all eligible participants to make the same election with respect to the additional elective deferrals under this subsection.

"(B) AGGREGATION.—For purposes of subparagraph (A), all plans maintained by employers who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 plan.

"(5) ELIGIBLE PARTICIPANT.—For purposes of this subsection, the term 'eligible participant' means, with respect to any plan year, a participant in a plan—

"(A) who has attained the age of 50 before the close of the plan year, and

"(B) with respect to whom no other elective deferrals may (without regard to this subsection) be made to the plan for the plan year by reason of the application of any limitation or other restriction described in paragraph (3) or comparable limitation contained in the terms of the plan.

"(6) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

"(A) APPLICABLE EMPLOYER PLAN.—The term 'applicable employer plan' means—

"(i) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

"(ii) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

"(iii) an eligible deferred compensation plan under section 457 of an eligible employer as defined in section 457(e)(1)(A), and

"(iv) an arrangement meeting the requirements of section 408 (k) or (p).

"(B) ELECTIVE DEFERRAL.—The term 'elective deferral' has the meaning given such term by subsection (u)(2)(C).

"(C) EXCEPTION FOR SECTION 457 PLANS.—This subsection shall not apply to an applicable employer plan described in subparagraph (A)(iii) for any year to which section 457(b)(3) applies.

"(D) COST-OF-LIVING ADJUSTMENT.—In the case of a year beginning after December 31, 2006, the Secretary shall adjust annually the $5,000 amount in paragraph (2)(A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period taken into account shall be the calendar quarter beginning July 1, 2005, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions in taxable years beginning after December 31, 2001.

SEC. 302. EQUITABLE TREATMENT FOR CONTRIBUTIONS OF EMPLOYEES TO DEFINED CONTRIBUTION PLANS.

(a) EQUITABLE TREATMENT.—

(1) IN GENERAL.—Subparagraph (B) of section 415(c)(1) (relating to limitation for defined contribution plans) is amended by striking "25 percent" and inserting "100 percent".

(2) APPLICATION TO SECTION 403(b).—Section 403(b) is amended—

(A) by striking "the exclusion allowance for such taxable year" in paragraph (1) and inserting "the applicable limit under section 415";

(B) by striking paragraph (2); and

(C) by inserting "or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated" before the period at the end of the second sentence of paragraph (3).

(3) CONFORMING AMENDMENTS.—

(A) Subsection (f) of section 72 is amended by striking "section 403(b)(2)(D)(iii))" and inserting "section 403(b)(2)(D)(iii), as in effect before the enactment of the Comprehensive Retirement Security and Pension Reform Act of 2001)".

(B) Section 404(a)(10)(B) is amended by striking ", the exclusion allowance under section 403(b)(2),".

(C) Section 404(j) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR MONEY PURCHASE PLANS.—For purposes of paragraph (1)(B), in the case of a defined contribution plan which is subject to the funding standards of section 412, section 415(c)(1)(B) shall be applied by substituting '25 percent' for '100 percent'.".

(D) Section 415(a)(2) is amended by striking ", and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2)".

(E) Section 415(c)(3) is amended by adding at the end the following new subparagraph:

"(E) ANNUITY CONTRACTS.—In the case of an annuity contract described in section 403(b), the term 'participant's compensation' means the participant's includible compensation determined under section 403(b)(3).".

(F) Section 415(c) is amended by striking paragraph (4).

(G) Section 415(c)(7) is amended to read as follows:

"(7) CERTAIN CONTRIBUTIONS BY CHURCH PLANS NOT TREATED AS EXCEEDING LIMIT.—

"(A) IN GENERAL.—Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of $10,000.

"(B) $40,000 AGGREGATE LIMITATION.—The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed $40,000.

"(C) ANNUAL ADDITION.—For purposes of this paragraph, the term 'annual addition' has the meaning given such term by paragraph (2).".

(H) Subparagraph (B) of section 402(g)(7) (as redesignated by section 201) is amended by inserting before the period at the end the following: "(as in effect before the enactment of the Comprehensive Retirement Security and Pension Reform Act of 2001)".

(I) Section 664(g) is amended—

(i) in paragraph (3)(E) by striking "limitations under section 415(c)" and inserting "applicable limitation under paragraph (7)", and

(ii) by adding at the end the following new paragraph:

"(7) APPLICABLE LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (3)(E), the applicable limitation under this paragraph with respect to a participant is an amount equal to the lesser of—

"(i) $30,000, or

"(ii) 25 percent of the participant's compensation (as defined in section 415(c)(3)).

"(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the $30,000 amount under subparagraph (A)(i) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1993, and any increase under this subparagraph which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to years beginning after December 31, 2001.

(b) SPECIAL RULES FOR SECTIONS 403(b) AND 408.—

(1) IN GENERAL.—Subsection (k) of section 415 is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULES FOR SECTIONS 403(B) AND 408.—For purposes of this section, any annuity contract described in section 403(b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). For purposes of this section, any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.".

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to limitation years beginning after December 31, 1999.

(B) EXCLUSION ALLOWANCE.—Effective for limitation years beginning in 2000, in the case of any annuity contract described in section 403(b) of the Internal Revenue Code of 1986, the amount of the contribution disqualified by reason of section 415(g) of such Code shall reduce the exclusion allowance as provided in section 403(b)(2) of such Code.

(3) MODIFICATION OF 403(b) EXCLUSION ALLOWANCE TO CONFORM TO 415 MODIFICATION.—The Secretary of the Treasury shall modify the regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 to render void the requirement that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance. For taxable years beginning after December 31, 1999, such regulations shall be applied as if such requirement were void.

(c) DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—

(1) IN GENERAL.—Subparagraph (B) of section 457(b)(2) (relating to salary limitation on eligible deferred compensation plans) is amended by striking "33⅓ percent" and inserting "100 percent".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning after December 31, 2001.

SEC. 303. FASTER VESTING OF CERTAIN EMPLOYER MATCHING CONTRIBUTIONS.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—Section 411(a) (relating to minimum vesting standards) is amended—

(1) in paragraph (2) in the matter preceding subparagraph (A), by striking "A plan" and inserting "Except as provided in paragraph (12), a plan"; and

(2) by adding at the end the following:

"(12) FASTER VESTING FOR MATCHING CONTRIBUTIONS.—In the case of matching contributions (as defined in section 401(m)(4)(A)), paragraph (2) shall be applied—

"(A) by substituting '3 years' for '5 years' in subparagraph (A), and

"(B) by substituting the following table for the table contained in subparagraph (B):

"Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6	100.".

(b) AMENDMENT OF ERISA.—Section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)) is amended—

(1) in paragraph (2), by striking "A plan" and inserting "Except as provided in paragraph (4), a plan", and

(2) by adding at the end the following:

"(4) In the case of matching contributions (as defined in section 401(m)(4)(A) of the Internal Revenue Code of 1986), paragraph (2) shall be applied—

"(A) by substituting '3 years' for '5 years' in subparagraph (A), and

"(B) by substituting the following table for the table contained in subparagraph (B):

“Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6	100.”.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 2001.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified by the date of the enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of the enactment); or

(ii) January 1, 2002; or

(B) January 1, 2006.

(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

SEC. 304. MODIFICATIONS TO MINIMUM DISTRIBUTION RULES.

(a) LIFE EXPECTANCY TABLES.—The Secretary of the Treasury shall modify the life expectancy tables under the regulations relating to minimum distribution requirements under sections 401(a)(9), 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2) of the Internal Revenue Code to reflect current life expectancy.

(b) REPEAL OF RULE WHERE DISTRIBUTIONS HAD BEGUN BEFORE DEATH OCCURS.—

(1) IN GENERAL.—Subparagraph (B) of section 401(a)(9) is amended by striking clause (i) and redesignating clauses (ii), (iii), and (iv) as clauses (i), (ii), and (iii), respectively.

(2) CONFORMING CHANGES.—

(A) Clause (i) of section 401(a)(9)(B) (as so redesignated) is amended—

(i) by striking “FOR OTHER CASES” in the heading; and

(ii) by striking “the distribution of the employee’s interest has begun in accordance with subparagraph (A)(ii)” and inserting “his entire interest has been distributed to him”.

(B) Clause (ii) of section 401(a)(9)(B) (as so redesignated) is amended by striking “clause (ii)” and inserting “clause (i)”.

(C) Clause (iii) of section 401(a)(9)(B) (as so redesignated) is amended—

(i) by striking “clause (iii)(I)” and inserting “clause (ii)(I)”;

(ii) by striking “clause (iii)(III)” in subclause (I) and inserting “clause (ii)(III)”;

(iii) by striking “the date on which the employee would have attained age 70½,” in subclause (I) and inserting “April 1 of the calendar year following the calendar year in which the spouse attains 70½,”; and

(iv) by striking “the distributions to such spouse begin,” in subclause (II) and inserting “his entire interest has been distributed to him,”.

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to years beginning after December 31, 2001.

(B) DISTRIBUTIONS TO SURVIVING SPOUSE.—

(i) IN GENERAL.—In the case of an employee described in clause (ii), distributions to the surviving spouse of the employee shall not be required to commence prior to the date on which such distributions would have been required to begin under section 401(a)(9)(B) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act).

(ii) CERTAIN EMPLOYEES.—An employee is described in this clause if such employee dies before—

(I) the date of the enactment of this Act, and

(II) the required beginning date (within the meaning of section 401(a)(9)(C) of the Internal Revenue Code of 1986) of the employee.

(c) REDUCTION IN EXCISE TAX.—

(1) IN GENERAL.—Subsection (a) of section 4974 is amended by striking "50 percent" and inserting "10 percent".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning after December 31, 2001.

SEC. 305. CLARIFICATION OF TAX TREATMENT OF DIVISION OF SECTION 457 PLAN BENEFITS UPON DIVORCE.

(a) IN GENERAL.—Section 414(p)(11) (relating to application of rules to governmental and church plans) is amended—

(1) by inserting "or an eligible deferred compensation plan (within the meaning of section 457(b))" after "subsection (e))"; and

(2) in the heading, by striking "GOVERNMENTAL AND CHURCH PLANS" and inserting "CERTAIN OTHER PLANS".

(b) WAIVER OF CERTAIN DISTRIBUTION REQUIREMENTS.—Paragraph (10) of section 414(p) is amended by striking "and section 409(d)" and inserting "section 409(d), and section 457(d)".

(c) TAX TREATMENT OF PAYMENTS FROM A SECTION 457 PLAN.—Subsection (p) of section 414 is amended by redesignating paragraph (12) as paragraph (13) and inserting after paragraph (11) the following new paragraph:

"(12) TAX TREATMENT OF PAYMENTS FROM A SECTION 457 PLAN.—If a distribution or payment from an eligible deferred compensation plan described in section 457(b) is made pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to such distribution or payment.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers, distributions, and payments made after December 31, 2001.

SEC. 306. PROVISIONS RELATING TO HARDSHIP DISTRIBUTIONS.

(a) SAFE HARBOR RELIEF.—

(1) IN GENERAL.—The Secretary of the Treasury shall revise the regulations relating to hardship distributions under section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code of 1986 to provide that the period an employee is prohibited from making elective and employee contributions in order for a distribution to be deemed necessary to satisfy financial need shall be equal to 6 months.

(2) EFFECTIVE DATE.—The revised regulations under this subsection shall apply to years beginning after December 31, 2001.

(b) HARDSHIP DISTRIBUTIONS NOT TREATED AS ELIGIBLE ROLLOVER DISTRIBUTIONS.—

(1) MODIFICATION OF DEFINITION OF ELIGIBLE ROLLOVER.—Subparagraph (C) of section 402(c)(4) (relating to eligible rollover distribution) is amended to read as follows:

"(C) any distribution which is made upon hardship of the employee.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to distributions made after December 31, 2001.

SEC. 307. WAIVER OF TAX ON NONDEDUCTIBLE CONTRIBUTIONS FOR DOMESTIC OR SIMILAR WORKERS.

(a) IN GENERAL.—Section 4972(c)(6) (relating to exceptions to nondeductible contributions), as amended by section 502, is amended by striking "and" at the end of subparagraph (A), by striking the period and inserting ", and" at the end of subparagraph (B), and by inserting after subparagraph (B) the following new subparagraph:

"(C) so much of the contributions to a simple retirement account (within the meaning of section 408(p)) or a simple plan (within the meaning of section 401(k)(11)) which are not deductible when contributed solely because such contributions are not made in connection with a trade or business of the employer."

(b) EXCLUSION OF CERTAIN CONTRIBUTIONS.—Section 4972(c)(6) is amended by adding at the end the following new sentence: "Subparagraph (C) shall not apply to contributions made on behalf of the employer or a member of the employer's family (as defined in section 447(e)(1)).".

(c) NO INFERENCE.—Nothing in the amendments made by this section shall be construed to infer the proper treatment of nondeductible contributions under the laws in effect before such amendments.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

TITLE IV—INCREASING PORTABILITY FOR PARTICIPANTS

SEC. 401. ROLLOVERS ALLOWED AMONG VARIOUS TYPES OF PLANS.

(a) ROLLOVERS FROM AND TO SECTION 457 PLANS.—

(1) ROLLOVERS FROM SECTION 457 PLANS.—

(A) IN GENERAL.—Section 457(e) (relating to other definitions and special rules) is amended by adding at the end the following:

"(16) ROLLOVER AMOUNTS.—

"(A) GENERAL RULE.—In the case of an eligible deferred compensation plan established and maintained by an employer described in subsection (e)(1)(A), if—

"(i) any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4) without regard to subparagraph (C) thereof),

"(ii) the employee transfers any portion of the property such employee receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

"(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

"(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) (other than paragraph (4)(C)) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

"(C) REPORTING.—Rollovers under this paragraph shall be reported to the Secretary in the same manner as rollovers from qualified retirement plans (as defined in section 4974(c)).".

(B) DEFERRAL LIMIT DETERMINED WITHOUT REGARD TO ROLLOVER AMOUNTS.—Section 457(b)(2) (defining eligible deferred compensation plan) is amended by inserting "(other than rollover amounts)" after "taxable year".

(C) DIRECT ROLLOVER.—Paragraph (1) of section 457(d) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by inserting after subparagraph (B) the following:

"(C) in the case of a plan maintained by an employer described in subsection (e)(1)(A), the plan meets requirements similar to the requirements of section 401(a)(31).

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of transfer.".

(D) WITHHOLDING.—

(i) Paragraph (12) of section 3401(a) is amended by adding at the end the following:

"(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457(b) maintained by an employer described in section 457(e)(1)(A); or".

(ii) Paragraph (3) of section 3405(c) is amended to read as follows:

"(3) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this subsection, the term 'eligible rollover distribution' has the meaning given such term by section 402(f)(2)(A).".

(iii) LIABILITY FOR WITHHOLDING.—Subparagraph (B) of section 3405(d)(2) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or", and by adding at the end the following:

"(iv) section 457(b) and which is maintained by an eligible employer described in section 457(e)(1)(A).".

(2) ROLLOVERS TO SECTION 457 PLANS.—

(A) IN GENERAL.—Section 402(c)(8)(B) (defining eligible retirement plan) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by inserting after clause (iv) the following new clause:

"(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A).".

(B) SEPARATE ACCOUNTING.—Section 402(c) is amended by adding at the end the following new paragraph:

"(10) SEPARATE ACCOUNTING.—Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.".

(C) 10 PERCENT ADDITIONAL TAX.—Subsection (t) of section 72 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new paragraph:

"(9) SPECIAL RULE FOR ROLLOVERS TO SECTION 457 PLANS.—For purposes of this subsection, a distribution from an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A) shall be treated as a distribution from a qualified retirement plan described in section 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c)).".

(b) ALLOWANCE OF ROLLOVERS FROM AND TO 403(b) PLANS.—

(1) ROLLOVERS FROM SECTION 403(b) PLANS.—Section 403(b)(8)(A)(ii) (relating to rollover amounts) is amended by striking "such distribution" and all that follows and inserting "such distribution to an eligible retirement plan described in section 402(c)(8)(B), and".

(2) ROLLOVERS TO SECTION 403(b) PLANS.—Section 402(c)(8)(B) (defining eligible retirement plan), as amended by subsection (a), is amended by striking "and" at the end of clause (iv), by striking the period at the end of clause (v) and inserting ", and", and by inserting after clause (v) the following new clause:

"(vi) an annuity contract described in section 403(b).".

(c) EXPANDED EXPLANATION TO RECIPIENTS OF ROLLOVER DISTRIBUTIONS.—Paragraph (1) of section 402(f) (relating to written explanation to recipients of distributions eligible for rollover treatment) is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end the following new subparagraph:

"(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.".

(d) SPOUSAL ROLLOVERS.—Section 402(c)(9) (relating to rollover where spouse receives distribution after death of employee) is amended by striking "; except that" and all that follows up to the end period.

(e) CONFORMING AMENDMENTS.—

(1) Section 72(o)(4) is amended by striking "and 408(d)(3)" and inserting "403(b)(8), 408(d)(3), and 457(e)(16)".

(2) Section 219(d)(2) is amended by striking "or 408(d)(3)" and inserting "408(d)(3), or 457(e)(16)".

(3) Section 401(a)(31)(B) is amended by striking "and 403(a)(4)" and inserting ", 403(a)(4), 403(b)(8), and 457(e)(16)".

(4) Subparagraph (A) of section 402(f)(2) is amended by striking "or paragraph (4) of section 403(a)" and inserting ", paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16)".

(5) Paragraph (1) of section 402(f) is amended by striking "from an eligible retirement plan".

(6) Subparagraphs (A) and (B) of section 402(f)(1) are amended by striking "another eligible retirement plan" and inserting "an eligible retirement plan".

(7) Subparagraph (B) of section 403(b)(8) is amended to read as follows:

"(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.".

(8) Section 408(a)(1) is amended by striking "or 403(b)(8)," and inserting "403(b)(8), or 457(e)(16)".

(9) Subparagraphs (A) and (B) of section 415(b)(2) are each amended by striking "and 408(d)(3)" and inserting "403(b)(8), 408(d)(3), and 457(e)(16)".

(10) Section 415(c)(2) is amended by striking "and 408(d)(3)" and inserting "408(d)(3), and 457(e)(16)".

(11) Section 4973(b)(1)(A) is amended by striking "or 408(d)(3)" and inserting "408(d)(3), or 457(e)(16)".

(f) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2001.

(2) REASONABLE NOTICE.—No penalty shall be imposed on a plan for the failure to provide the information required by the amendment made by subsection (c) with respect to any distribution made before the date that is 90 days after the date on which the Secretary of the Treasury issues a safe harbor rollover notice after the date of the enactment of this Act, if the administrator of such plan makes a reasonable attempt to comply with such requirement.

(3) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of any amendment made by this section.

SEC. 402. ROLLOVERS OF IRAS INTO WORKPLACE RETIREMENT PLANS.

(a) IN GENERAL.—Subparagraph (A) of section 408(d)(3) (relating to rollover amounts) is amended by adding "or" at the end of clause (i), by striking clauses (ii) and (iii), and by adding at the end the following:

"(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term 'eligible retirement plan' means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 403(b) is amended by striking "section 408(d)(3)(A)(iii)" and inserting "section 408(d)(3)(A)(ii)".

(2) Clause (i) of section 408(d)(3)(D) is amended by striking "(i), (ii), or (iii)" and inserting "(i) or (ii)".

(3) Subparagraph (G) of section 408(d)(3) is amended to read as follows:

"(G) SIMPLE RETIREMENT ACCOUNTS.—In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not apply unless such payment or distribution is paid into another simple retirement account.".

(c) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2001.

(2) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of the amendments made by this section.

SEC. 403. ROLLOVERS OF AFTER-TAX CONTRIBUTIONS.

(a) ROLLOVERS FROM EXEMPT TRUSTS.—Paragraph (2) of section 402(c) (relating to maximum amount which may be rolled over) is amended by adding at the end the following: "The preceding sentence shall not apply to such distribution to the extent—

"(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

"(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).".

(b) OPTIONAL DIRECT TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.—Subparagraph (B) of section 401(a)(31) (relating to limitation) is amended by adding at the end the following:

"The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

"(i) agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or "(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).".

(c) RULES FOR APPLYING SECTION 72 TO IRAS.—Paragraph (3) of section 408(d) (relating to special rules for applying section 72) is amended by inserting at the end the following:

"(H) APPLICATION OF SECTION 72.—

"(i) IN GENERAL.—If—

"(I) a distribution is made from an individual retirement plan, and

"(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

"(ii) APPLICABLE RULES.—In the case of a distribution described in clause (i)—

"(I) section 72 shall be applied separately to such distribution,

"(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

"(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2001.

SEC. 404. HARDSHIP EXCEPTION TO 60-DAY RULE.

(a) EXEMPT TRUSTS.—Paragraph (3) of section 402(c) (relating to transfer must be made within 60 days of receipt) is amended to read as follows:

"(3) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

"(B) HARDSHIP EXCEPTION.—The Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.".

(b) IRAS.—Paragraph (3) of section 408(d) (relating to rollover contributions), as amended by section 403, is amended by adding after subparagraph (H) the following new subparagraph:

"(I) WAIVER OF 60-DAY REQUIREMENT.—The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2001.

SEC. 405. TREATMENT OF FORMS OF DISTRIBUTION.

(a) PLAN TRANSFERS.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (6) of section 411(d) (relating to accrued benefit not to be decreased by amendment) is amended by adding at the end the following:

"(D) PLAN TRANSFERS.—

"(i) IN GENERAL.—A defined contribution plan (in this subparagraph referred to as the 'transferee plan') shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the 'transferor plan') to the extent that—

"(I) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan, "(II) the terms of both the transferor plan and the transferee plan authorize the transfer described in subclause (I),

"(III) the transfer described in subclause (I) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan,

"(IV) the election described in subclause (III) was made after the participant or beneficiary received a notice describing the consequences of making the election, and

"(V) the transferee plan allows the participant or beneficiary described in subclause (III) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

"(ii) EXCEPTION.—Clause (i) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

"(E) ELIMINATION OF FORM OF DISTRIBUTION.—Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This subparagraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

"(i) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated, and

"(ii) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.".

(2) AMENDMENT OF ERISA.—Section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) is amended by adding at the end the following:

"(4)(A) A defined contribution plan (in this subparagraph referred to as the 'transferee plan') shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the 'transferor plan') to the extent that—

"(i) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan;

"(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i);

"(iii) the transfer described in clause (i) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan;

"(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election; and

"(v) the transferee plan allows the participant or beneficiary described in clause (iii) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

"(B) Subparagraph (A) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

"(5) Except to the extent provided in regulations promulgated by the Secretary of the Treasury, a defined contribution plan shall not be treated as failing to meet the requirements of this subsection merely because of the elimination of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

"(A) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated; and

"(B) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to years beginning after December 31, 2001.

(b) REGULATIONS.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (6)(B) of section 411(d) (relating to accrued benefit not to be decreased by amendment) is amended by inserting after the second sentence the following new sentence: "The Sec-

retary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants and does not adversely affect the rights of any participant in a more than de minimis manner.".

(2) AMENDMENT OF ERISA.—Section 204(g)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)(2)) is amended by inserting before the last sentence the following new sentence: "The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants and does not adversely affect the rights of any participant in a more than de minimis manner.".

(3) SECRETARY DIRECTED.—Not later than December 31, 2003, the Secretary of the Treasury is directed to issue regulations under section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974, including the regulations required by the amendment made by this subsection. Such regulations shall apply to plan years beginning after December 31, 2003, or such earlier date as is specified by the Secretary of the Treasury.

SEC. 406. RATIONALIZATION OF RESTRICTIONS ON DISTRIBUTIONS.

(a) MODIFICATION OF SAME DESK EXCEPTION.—

(1) SECTION 401(k).—

(A) Section 401(k)(2)(B)(i)(I) (relating to qualified cash or deferred arrangements) is amended by striking "separation from service" and inserting "severance from employment".

(B) Subparagraph (A) of section 401(k)(10) (relating to distributions upon termination of plan or disposition of assets or subsidiary) is amended to read as follows:

"(A) IN GENERAL.—An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).".

(C) Section 401(k)(10) is amended—

(i) in subparagraph (B)—

(I) by striking "An event" in clause (i) and inserting "A termination"; and

(II) by striking "the event" in clause (i) and inserting "the termination";

(ii) by striking subparagraph (C); and

(iii) by striking "OR DISPOSITION OF ASSETS OR SUBSIDIARY" in the heading.

(2) SECTION 403(b).—

(A) Paragraphs (7)(A)(ii) and (11)(A) of section 403(b) are each amended by striking "separates from service" and inserting "has a severance from employment".

(B) The heading for paragraph (11) of section 403(b) is amended by striking "SEPARATION FROM SERVICE" and inserting "SEVERANCE FROM EMPLOYMENT".

(3) SECTION 457.—Clause (ii) of section 457(d)(1)(A) is amended by striking "is separated from service" and inserting "has a severance from employment".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2001.

SEC. 407. PURCHASE OF SERVICE CREDIT IN GOVERNMENTAL DEFINED BENEFIT PLANS.

(a) 403(b) PLANS.—Subsection (b) of section 403 is amended by adding at the end the following new paragraph:

"(13) TRUSTEE-TO-TRUSTEE TRANSFERS TO PURCHASE PERMISSIVE SERVICE CREDIT.—No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

"(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

"(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.".

(b) 457 PLANS.—Subsection (e) of section 457 is amended by adding after paragraph (16) the following new paragraph:

"(17) TRUSTEE-TO-TRUSTEE TRANSFERS TO PURCHASE PERMISSIVE SERVICE CREDIT.—No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

"(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

"(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to trustee-to-trustee transfers after December 31, 2001.

SEC. 408. EMPLOYERS MAY DISREGARD ROLLOVERS FOR PURPOSES OF CASH-OUT AMOUNTS.

(a) QUALIFIED PLANS.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—Section 411(a)(11) (relating to restrictions on certain mandatory distributions) is amended by adding at the end the following:

"(D) SPECIAL RULE FOR ROLLOVER CONTRIBUTIONS.—A plan shall not fail to meet the requirements of this paragraph if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term 'rollover contributions' means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).".

(2) AMENDMENT OF ERISA.—Section 203(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(c)) is amended by adding at the end the following:

"(4) A plan shall not fail to meet the requirements of this subsection if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term 'rollover contributions' means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Internal Revenue Code of 1986.".

(b) ELIGIBLE DEFERRED COMPENSATION PLANS.—Clause (i) of section 457(e)(9)(A) is amended by striking "such amount" and inserting "the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D))".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2001.

SEC. 409. MINIMUM DISTRIBUTION AND INCLUSION REQUIREMENTS FOR SECTION 457 PLANS.

(a) MINIMUM DISTRIBUTION REQUIREMENTS.—Paragraph (2) of section 457(d) (relating to distribution requirements) is amended to read as follows:

"(2) MINIMUM DISTRIBUTION REQUIREMENTS.—A plan meets the minimum distribution requirements of this paragraph if such plan meets the requirements of section 401(a)(9).".

(b) INCLUSION IN GROSS INCOME.—

(1) YEAR OF INCLUSION.—Subsection (a) of section 457 (relating to year of inclusion in gross income) is amended to read as follows:

"(a) YEAR OF INCLUSION IN GROSS INCOME.—

"(1) IN GENERAL.—Any amount of compensation deferred under an eligible deferred compensation plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income—

"(A) is paid to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(A), and

"(B) is paid or otherwise made available to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(B).

"(2) SPECIAL RULE FOR ROLLOVER AMOUNTS.—To the extent provided in section 72(t)(9), section 72(t) shall apply to any amount includible in gross income under this subsection.".

(2) CONFORMING AMENDMENTS.—

(A) So much of paragraph (9) of section 457(e) as precedes subparagraph (A) is amended to read as follows:

"(9) BENEFITS OF TAX EXEMPT ORGANIZATION PLANS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC.—In the case of an eligible deferred compensation plan of an employer described in subsection (e)(1)(B)—".

(B) Section 457(d) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR GOVERNMENT PLAN.—An eligible deferred compensation plan of an employer described in subsection (e)(1)(A) shall not be treated as failing to meet the requirements of this subsection solely by reason of making a distribution described in subsection (e)(9)(A).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2001.

TITLE V—STRENGTHENING PENSION SECURITY AND ENFORCEMENT

SEC. 501. REPEAL OF PERCENT OF CURRENT LIABILITY FUNDING LIMIT.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—Section 412(c)(7) (relating to full-funding limitation) is amended—

(1) by striking "the applicable percentage" in subparagraph (A)(i)(I) and inserting "in the case of plan years beginning before January 1, 2004, the applicable percentage"; and

(2) by amending subparagraph (F) to read as follows:

"(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

"In the case of any plan year beginning in—	The applicable percentage is—
2002	165
2003	170.".

(b) AMENDMENT OF ERISA.—Section 302(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(c)(7)) is amended—

(1) by striking "the applicable percentage" in subparagraph (A)(i)(I) and inserting "in the case of plan years beginning before January 1, 2004, the applicable percentage"; and

(2) by amending subparagraph (F) to read as follows:

"(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

"In the case of any plan year beginning in—	The applicable percentage is—
2002	165
2003	170.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2001.

SEC. 502. MAXIMUM CONTRIBUTION DEDUCTION RULES MODIFIED AND APPLIED TO ALL DEFINED BENEFIT PLANS.

(a) IN GENERAL.—Subparagraph (D) of section 404(a)(1) (relating to special rule in case of certain plans) is amended to read as follows:

"(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—

"(i) IN GENERAL.—In the case of any defined benefit plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded termination liability (determined as if the proposed termination date referred to in section 4041(b)(2)(A)(i)(II) of the Employee Retirement Income Security Act of 1974 were the last day of the plan year).

"(ii) PLANS WITH LESS THAN 100 PARTICIPANTS.—For purposes of this subparagraph, in the case of a plan which has less than 100 participants for the plan year, termination liability shall not include the liability attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years before the termination date.

"(iii) RULE FOR DETERMINING NUMBER OF PARTICIPANTS.—For purposes of determining whether a plan has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(C))) shall be treated as one plan, but only employees of such member or employer shall be taken into account.

"(iv) PLANS MAINTAINED BY PROFESSIONAL SERVICE EMPLOYERS.—Clause (i) shall not apply to a plan described in section 4021(b)(13) of the Employee Retirement Income Security Act of 1974.".

(b) CONFORMING AMENDMENT.—Paragraph (6) of section 4972(c), as amended by section 207, is amended to read as follows:

"(6) EXCEPTIONS.—In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account so much of the contributions to one or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

"(A) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

"(B) the sum of—

"(i) the amount of contributions described in section 401(m)(4)(A), plus

"(ii) the amount of contributions described in section 402(g)(3)(A).

For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (B).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2001.

SEC. 503. EXCISE TAX RELIEF FOR SOUND PENSION FUNDING.

(a) IN GENERAL.—Subsection (c) of section 4972 (relating to nondeductible contributions) is amended by adding at the end the following new paragraph:

"(7) DEFINED BENEFIT PLAN EXCEPTION.—In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof). For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph. If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2001.

SEC. 504. EXCISE TAX ON FAILURE TO PROVIDE NOTICE BY DEFINED BENEFIT PLANS SIGNIFICANTLY REDUCING FUTURE BENEFIT ACCRUALS.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—

(1) IN GENERAL.—Chapter 43 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

"SEC. 4980F. FAILURE OF APPLICABLE PLANS REDUCING BENEFIT ACCRUALS TO SATISFY NOTICE REQUIREMENTS.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be $100 for each day in the noncompliance period with respect to such failure.

"(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the notice to which the failure relates is provided or the failure is otherwise corrected.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED AND REASONABLE DILIGENCE EXERCISED.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for the tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

"(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) on any failure if—

"(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

"(B) such person provides the notice described in subsection (e) during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

"(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

"(B) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

"(4) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

"(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

"(1) In the case of a plan other than a multiemployer plan, the employer.

"(2) In the case of a multiemployer plan, the plan.

"(e) NOTICE REQUIREMENTS FOR PLANS SIGNIFICANTLY REDUCING BENEFIT ACCRUALS.—

"(1) IN GENERAL.—If an applicable pension plan is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide written notice to each applicable individual (and to each employee organization representing applicable individuals).

"(2) NOTICE.—The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

"(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

"(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

"(3) TIMING OF NOTICE.—Except as provided in regulations, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

"(4) DESIGNEES.—Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

"(5) NOTICE BEFORE ADOPTION OF AMENDMENT.—A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

"(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means, with respect to any plan amendment—

"(A) each participant in the plan, and

"(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

"(2) APPLICABLE PENSION PLAN.—The term 'applicable pension plan' means—

"(A) any defined benefit plan, or

"(B) an individual account plan which is subject to the funding standards of section 412.

Such term shall not include a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

"(3) EARLY RETIREMENT.—A plan amendment which eliminates or significantly reduces any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) shall be treated as having the effect of significantly reducing the rate of future benefit accrual.

"(g) NEW TECHNOLOGIES.—The Secretary may by regulations allow any notice under subsection (e) to be provided by using new technologies.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by adding at the end the following new item:

"Sec. 4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements.".

(b) AMENDMENT OF ERISA.—Section 204(h) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(h)) is amended by adding at the end the following new paragraphs:

"(3)(A) An applicable pension plan to which paragraph (1) applies shall not be treated as meeting the requirements of such paragraph unless, in addition to any notice required to be provided to an individual or organization under such paragraph, the plan administrator provides the notice described in subparagraph (B) to each applicable individual (and to each employee organization representing applicable individuals).

"(B) The notice required by subparagraph (A) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary of the Treasury) to allow applicable individuals to understand the effect of the plan amendment. The Secretary of the Treasury may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

"(i) which has fewer than 100 participants who have accrued a benefit under the plan, or

"(ii) which offers participants the option to choose between the new benefit formula and the old benefit formula.

"(C) Except as provided in regulations prescribed by the Secretary of the Treasury, the notice required by subparagraph (A) shall be provided within a reasonable time before the effective date of the plan amendment.

"(D) Any notice under subparagraph (A) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

"(E) A plan shall not be treated as failing to meet the requirements of subparagraph (A) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

"(F) The Secretary of the Treasury may by regulations allow any notice under this paragraph to be provided by using new technologies.

"(4) For purposes of paragraph (3)—

"(A) The term 'applicable individual' means, with respect to any plan amendment—

"(i) each participant in the plan; and

"(ii) any beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

"(B) The term 'applicable pension plan' means—

"(i) any defined benefit plan; or

"(ii) an individual account plan which is subject to the funding standards of section 412 of the Internal Revenue Code of 1986.

"(C) A plan amendment which eliminates or significantly reduces any early retirement benefit or retirement-type subsidy (within the meaning of subsection (g)(2)(A)) shall be treated as having the effect of significantly reducing the rate of future benefit accrual.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan amendments taking effect on or after the date of the enactment of this Act.

(2) TRANSITION.—Until such time as the Secretary of the Treasury issues regulations under sections 4980F(e)(2) and (3) of the Internal Revenue Code of 1986, and section 204(h)(3) of the Employee Retirement Income Security Act of 1974, as added by the amendments made by this section, a plan shall be treated as meeting the requirements of such sections if it makes a good faith effort to comply with such requirements.

(3) SPECIAL NOTICE RULE.—

(A) IN GENERAL.—The period for providing any notice required by the amendments made by this section shall not end before the date which is 3 months after the date of the enactment of this Act.

(B) REASONABLE NOTICE.—The amendments made by this section shall not apply to any plan amendment taking effect on or after the date of the enactment of this Act if, before April 25, 2001, notice was provided to participants and beneficiaries adversely affected by the plan amendment (or their representatives) which was reasonably expected to notify them of the nature and effective date of the plan amendment.

(d) STUDY.—The Secretary of the Treasury shall prepare a report on the effects of conversions of traditional defined benefit plans to cash balance or hybrid formula plans. Such study shall examine the effect of such conversions on longer service participants, including the incidence and effects of "wear away" provisions under which participants earn no additional benefits for a period of time after the conversion. As soon as practicable, but not later than 60 days after the date of the enactment of this Act, the Secretary shall submit such report, together with recommendations thereon, to the Committee on Ways and Means and the Committee on Education and the Workforce of the House of Representatives and the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate.

SEC. 505. TREATMENT OF MULTIEMPLOYER PLANS UNDER SECTION 415.

(a) COMPENSATION LIMIT.—

(1) IN GENERAL.—Paragraph (11) of section 415(b) (relating to limitation for defined benefit plans) is amended to read as follows:

"(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL AND MULTIEMPLOYER PLANS.—In the case of a governmental plan (as defined in section 414(d)) or a multiemployer plan (as defined in section 414(f)), subparagraph (B) of paragraph (1) shall not apply.".

(2) CONFORMING AMENDMENT.—Section 415(b)(7) (relating to benefits under certain collectively bargained plans) is amended by inserting "(other than a multiemployer plan)" after "defined benefit plan" in the matter preceding subparagraph (A).

(b) COMBINING AND AGGREGATION OF PLANS.—

(1) COMBINING OF PLANS.—Subsection (f) of section 415 (relating to combining of plans) is amended by adding at the end the following:

"(3) EXCEPTION FOR MULTIEMPLOYER PLANS.—Notwithstanding paragraph (1) and subsection (g), a multiemployer plan (as defined in section 414(f)) shall not be combined or aggregated—

"(A) with any other plan which is not a multiemployer plan for purposes of applying subsection (b)(1)(B) to such other plan, or

"(B) with any other multiemployer plan for purposes of applying the limitations established in this section.".

(2) CONFORMING AMENDMENT FOR AGGREGATION OF PLANS.—Subsection (g) of section 415 (relating to aggregation of plans) is amended by striking "The Secretary" and inserting "Except as provided in subsection (f)(3), the Secretary".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2001.

SEC. 506. PROTECTION OF INVESTMENT OF EMPLOYEE CONTRIBUTIONS TO 401(K) PLANS.

(a) IN GENERAL.—Section 1524(b) of the Taxpayer Relief Act of 1997 is amended to read as follows:

"(b) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to elective deferrals for plan years beginning after December 31, 1998.

"(2) NONAPPLICATION TO PREVIOUSLY ACQUIRED PROPERTY.—The amendments made by this section shall not apply to any elective deferral which is invested in assets consisting of qualifying employer securities, qualifying employer real property, or both, if such assets were acquired before January 1, 1999.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply as if included in the provision of the Taxpayer Relief Act of 1997 to which it relates.

SEC. 507. PERIODIC PENSION BENEFITS STATEMENTS.

(a) IN GENERAL.—Section 105(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025 (a)) is amended to read as follows:

"(a)(1) Except as provided in paragraph (2)—

"(A) the administrator of an individual account plan shall furnish a pension benefit statement—

"(i) to a plan participant at least once annually, and

"(ii) to a plan beneficiary upon written request, and

"(B) the administrator of a defined benefit plan shall furnish a pension benefit statement—

"(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is furnished to participants, and

"(ii) to a plan participant or plan beneficiary of the plan upon written request.

"(2) Notwithstanding paragraph (1), the administrator of a plan to which more than 1 unaffiliated employer is required to contribute shall only be required to furnish a pension benefit statement under paragraph (1) upon the written request of a participant or beneficiary of the plan.

"(3) A pension benefit statement under paragraph (1)—

"(A) shall indicate, on the basis of the latest available information—

"(i) the total benefits accrued, and

"(ii) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

"(B) shall be written in a manner calculated to be understood by the average plan participant, and

"(C) may be provided in written, electronic, telephonic, or other appropriate form.

"(4)(A) In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if the administrator provides the participant at least once each year with notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, telephonic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.

"(B) The Secretary may provide that years in which no employee or former employee benefits (within the meaning of section 410(b) of the Internal Revenue Code of 1986) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i).".

(b) CONFORMING AMENDMENTS.—

(1) Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) is amended by striking subsection (d).

(2) Section 105(b) of such Act (29 U.S.C. 1025(b)) is amended to read as follows:

"(b) In no case shall a participant or beneficiary of a plan be entitled to more than one statement described in subsection (a)(1)(A) or (a)(1)(B)(ii), whichever is applicable, in any 12-month period.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2002.

SEC. 508. PROHIBITED ALLOCATIONS OF STOCK IN S CORPORATION ESOP.

(a) IN GENERAL.—Section 409 (relating to qualifications for tax credit employee stock ownership plans) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) PROHIBITED ALLOCATIONS OF SECURITIES IN AN S CORPORATION.—

"(1) IN GENERAL.—An employee stock ownership plan holding employer securities consisting of stock in an S corporation shall provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person.

"(2) FAILURE TO MEET REQUIREMENTS.—

"(A) IN GENERAL.—If a plan fails to meet the requirements of paragraph (1), the plan shall be treated as having distributed to any disqualified person the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation.

"(B) CROSS REFERENCE.—

"For excise tax relating to violations of paragraph (1) and ownership of synthetic equity, see section 4979A.

"(3) NONALLOCATION YEAR.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'nonallocation year' means any plan year of an employee stock ownership plan if, at any time during such plan year—

"(i) such plan holds employer securities consisting of stock in an S corporation, and

"(ii) disqualified persons own at least 50 percent of the number of shares of stock in the S corporation.

"(B) ATTRIBUTION RULES.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The rules of section 318(a) shall apply for purposes of determining ownership, except that—

"(I) in applying paragraph (1) thereof, the members of an individual's family shall include members of the family described in paragraph (4)(D), and

"(II) paragraph (4) thereof shall not apply.

"(ii) DEEMED-OWNED SHARES.—Notwithstanding the employee trust exception in section 318(a)(2)(B)(i), individual shall be treated as owning deemed-owned shares of the individual.

Solely for purposes of applying paragraph (5), this subparagraph shall be applied after the attribution rules of paragraph (5) have been applied.

"(4) DISQUALIFIED PERSON.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'disqualified person' means any person if—

"(i) the aggregate number of deemed-owned shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned shares of stock in the S corporation, or

"(ii) in the case of a person not described in clause (i), the number of deemed-owned shares of such person is at least 10 percent of the number of deemed-owned shares of stock in such corporation.

"(B) TREATMENT OF FAMILY MEMBERS.—In the case of a disqualified person described in subparagraph (A)(i), any member of such person's family with deemed-owned shares shall be treated as a disqualified person if not otherwise treated as a disqualified person under subparagraph (A).

"(C) DEEMED-OWNED SHARES.—

"(i) IN GENERAL.—The term 'deemed-owned shares' means, with respect to any person—

"(I) the stock in the S corporation constituting employer securities of an employee stock ownership plan which is allocated to such person under the plan, and

"(II) such person's share of the stock in such corporation which is held by such plan but which is not allocated under the plan to participants.

"(ii) PERSON'S SHARE OF UNALLOCATED STOCK.—For purposes of clause (i)(II), a person's share of unallocated S corporation stock held by such plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all participants in the same proportions as the most recent stock allocation under the plan.

"(D) MEMBER OF FAMILY.—For purposes of this paragraph, the term 'member of the family' means, with respect to any individual—

"(i) the spouse of the individual,

"(ii) an ancestor or lineal descendant of the individual or the individual's spouse,

"(iii) a brother or sister of the individual or the individual's spouse and any lineal descendant of the brother or sister, and

"(iv) the spouse of any individual described in clause (ii) or (iii).

A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual's spouse for purposes of this subparagraph.

"(5) TREATMENT OF SYNTHETIC EQUITY.—For purposes of paragraphs (3) and (4), in the case of a person who owns synthetic equity in the S corporation, except to the extent provided in regulations, the shares of stock in such corporation on which such synthetic equity is based shall be treated as outstanding stock in such corporation and deemed-owned shares of such person if such treatment of synthetic equity of 1 or more such persons results in—

"(A) the treatment of any person as a disqualified person, or

"(B) the treatment of any year as a nonallocation year.

For purposes of this paragraph, synthetic equity shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of section 318(a). If, without regard to this paragraph, a person is treated as a disqualified person or a year is treated as a nonallocation year, this paragraph shall not be construed to result in the person or year not being so treated.

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' has the meaning given such term by section 4975(e)(7).

"(B) EMPLOYER SECURITIES.—The term 'employer security' has the meaning given such term by section 409(l).

"(C) SYNTHETIC EQUITY.—The term 'synthetic equity' means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

"(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.".

(b) COORDINATION WITH SECTION 4975(e)(7).—The last sentence of section 4975(e)(7) (defining employee stock ownership plan) is amended by inserting ", section 409(p)," after "409(n)".

(c) EXCISE TAX.—

(1) APPLICATION OF TAX.—Subsection (a) of section 4979A (relating to tax on certain prohibited allocations of employer securities) is amended—

(A) by striking "or" at the end of paragraph (1), and

(B) by striking all that follows paragraph (2) and inserting the following:

"(3) there is any allocation of employer securities which violates the provisions of section 409(p), or a nonallocation year described in subsection (e)(2)(C) with respect to an employee stock ownership plan, or

"(4) any synthetic equity is owned by a disqualified person in any nonallocation year,

there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.".

(2) LIABILITY.—Section 4979A(c) (defining liability for tax) is amended to read as follows:

"(c) LIABILITY FOR TAX.—The tax imposed by this section shall be paid—

"(1) in the case of an allocation referred to in paragraph (1) or (2) of subsection (a), by—

"(A) the employer sponsoring such plan, or

"(B) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be), and

"(2) in the case of an allocation or ownership referred to in paragraph (3) or (4) of subsection (a), by the S corporation the stock in which was so allocated or owned.".

(3) DEFINITIONS.—Section 4979A(e) (relating to definitions) is amended to read as follows:

"(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) DEFINITIONS.—Except as provided in paragraph (2), terms used in this section have the same respective meanings as when used in sections 409 and 4978.

"(2) SPECIAL RULES RELATING TO TAX IMPOSED BY REASON OF PARAGRAPH (3) OR (4) OF SUBSECTION (a).—

"(A) PROHIBITED ALLOCATIONS.—The amount involved with respect to any tax imposed by reason of subsection (a)(3) is the amount allocated to the account of any person in violation of section 409(p)(1).

"(B) SYNTHETIC EQUITY.—The amount involved with respect to any tax imposed by reason of subsection (a)(4) is the value of the shares on which the synthetic equity is based.

"(C) SPECIAL RULE DURING FIRST NONALLOCATION YEAR.—For purposes of subparagraph (A), the amount involved for the first nonallocation year of any employee stock ownership plan shall be determined by taking into account the total value of all the deemed-owned shares of all disqualified persons with respect to such plan.

"(D) STATUTE OF LIMITATIONS.—The statutory period for the assessment of any tax imposed by this section by reason of paragraph (3) or (4) of subsection (a) shall not expire before the date which is 3 years from the later of—

"(i) the allocation or ownership referred to in such paragraph giving rise to such tax, or

"(ii) the date on which the Secretary is notified of such allocation or ownership.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2004.

(2) EXCEPTION FOR CERTAIN PLANS.—In the case of any—

(A) employee stock ownership plan established after March 14, 2001, or

(B) employee stock ownership plan established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of the Internal Revenue Code of 1986 is not in effect on such date,

the amendments made by this section shall apply to plan years ending after March 14, 2001.

TITLE VI—REDUCING REGULATORY BURDENS

SEC. 601. MODIFICATION OF TIMING OF PLAN VALUATIONS.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (9) of section 412(c) (relating to annual valuation) is amended to read as follows:

"(9) ANNUAL VALUATION.—

"(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

"(B) VALUATION DATE.—

"(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

"(ii) ELECTION TO USE PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if—

"(I) an election is in effect under this clause with respect to the plan, and

"(II) as of such date, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

"(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

"(iv) ELECTION.—An election under clause (ii), once made, shall be irrevocable without the consent of the Secretary.".

(b) AMENDMENT OF ERISA.—Paragraph (9) of section 302(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(c)) is amended—

(1) by inserting "(A)" after "(9)"; and

(2) by adding at the end the following:

"(B)(i) Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

"(ii) The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if—

"(I) an election is in effect under this clause with respect to the plan; and

"(II) as of such date, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

"(iii) Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

"(iv) An election under clause (ii), once made, shall be irrevocable without the consent of the Secretary of the Treasury.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2001.

SEC. 602. ESOP DIVIDENDS MAY BE REINVESTED WITHOUT LOSS OF DIVIDEND DEDUCTION.

(a) IN GENERAL.—Section 404(k)(2)(A) (defining applicable dividends) is amended by striking "or" at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

"(iii) is, at the election of such participants or their beneficiaries—

"(I) payable as provided in clause (i) or (ii), or

"(II) paid to the plan and reinvested in qualifying employer securities, or".

(b) STANDARDS FOR DISALLOWANCE.—Section 404(k)(5)(A) (relating to disallowance of deduction) is amended by inserting "avoidance or" before "evasion".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

SEC. 603. REPEAL OF TRANSITION RULE RELATING TO CERTAIN HIGHLY COMPENSATED EMPLOYEES.

(a) IN GENERAL.—Paragraph (4) of section 1114(c) of the Tax Reform Act of 1986 is hereby repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) shall apply to plan years beginning after December 31, 2001.

SEC. 604. EMPLOYEES OF TAX-EXEMPT ENTITIES.

(a) IN GENERAL.—The Secretary of the Treasury shall modify Treasury Regulations section 1.410(b)–6(g) to provide that employees of an organization described in section 403(b)(1)(A)(i) of the Internal Revenue Code of 1986 who are eligible to make contributions under section 403(b) of such Code pursuant to a salary reduction agreement may be treated as excludable with respect to a plan under section 401(k) or (m) of such Code that is provided under the same general arrangement as a plan under such section 401(k), if—

(1) no employee of an organization described in section 403(b)(1)(A)(i) of such Code is eligible to participate in such section 401(k) plan or section 401(m) plan; and

(2) 95 percent of the employees who are not employees of an organization described in section 403(b)(1)(A)(i) of such Code are eligible to participate in such plan under such section 401(k) or (m).

(b) EFFECTIVE DATE.—The modification required by subsection (a) shall apply as of the same date set forth in section 1426(b) of the Small Business Job Protection Act of 1996.

SEC. 605. CLARIFICATION OF TREATMENT OF EMPLOYER-PROVIDED RETIREMENT ADVICE.

(a) IN GENERAL.—Subsection (a) of section 132 (relating to exclusion from gross income) is amended by striking "or" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting ", or", and by adding at the end the following new paragraph:

"(7) qualified retirement planning services.".

(b) QUALIFIED RETIREMENT PLANNING SERVICES DEFINED.—Section 132 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following:

"(m) QUALIFIED RETIREMENT PLANNING SERVICES.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified retirement planning services' means any retirement planning advice or information provided to an employee and his spouse by an employer maintaining a qualified employer plan.

"(2) NONDISCRIMINATION RULE.—Subsection (a)(7) shall apply in the case of highly compensated employees only if such services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

"(3) QUALIFIED EMPLOYER PLAN.—For purposes of this subsection, the term 'qualified employer plan' means a plan, contract, pension, or account described in section 219(g)(5).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2001.

SEC. 606. REPORTING SIMPLIFICATION.

(a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR OWNERS AND THEIR SPOUSES.—

(1) IN GENERAL.—The Secretary of the Treasury and the Secretary of Labor shall modify the requirements for filing annual returns with respect to one-participant retirement plans to ensure that such plans with assets of $250,000 or less as of the close of the plan year need not file a return for that year.

(2) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term "one-participant retirement plan" means a retirement plan that—

(A) on the first day of the plan year—

(i) covered only the employer (and the employer's spouse) and the employer owned the entire business (whether or not incorporated); or

(ii) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation);

(B) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan of the business that covers the employees of the business;

(C) does not provide benefits to anyone except the employer (and the employer's spouse) or the partners (and their spouses);

(D) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

(E) does not cover a business that leases employees.

(3) OTHER DEFINITIONS.—Terms used in paragraph (2) which are also used in section 414 of the Internal Revenue Code of 1986 shall have the respective meanings given such terms by such section.

(b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case of plan years beginning after December 31, 2002, the Secretary of the Treasury and the Secretary of Labor shall provide for the filing of a simplified annual return for any retirement plan which covers less than 25 employees on the first day of a plan year and which meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2).

(c) EFFECTIVE DATE.—The provisions of this section shall take effect on January 1, 2002.

SEC. 607. IMPROVEMENT OF EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

The Secretary of the Treasury shall continue to update and improve the Employee Plans Compliance Resolution System (or any successor program) giving special attention to—

(1) increasing the awareness and knowledge of small employers concerning the availability and use of the program;

(2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures;

(3) extending the duration of the self-correction period under the Self-Correction Program for significant compliance failures;

(4) expanding the availability to correct insignificant compliance failures under the Self-Correction Program during audit; and

(5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

SEC. 608. REPEAL OF THE MULTIPLE USE TEST.

(a) IN GENERAL.—Paragraph (9) of section 401(m) is amended to read as follows:

"(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2001.

SEC. 609. FLEXIBILITY IN NONDISCRIMINATION, COVERAGE, AND LINE OF BUSINESS RULES.

(a) NONDISCRIMINATION.—

(1) IN GENERAL.—The Secretary of the Treasury shall, by regulation, provide that a plan shall be deemed to satisfy the requirements of section 401(a)(4) of the Internal Revenue Code of 1986 if such plan satisfies the facts and circumstances test under section 401(a)(4) of such Code, as in effect before January 1, 1994, but only if—

(A) the plan satisfies conditions prescribed by the Secretary to appropriately limit the availability of such test; and

(B) the plan is submitted to the Secretary for a determination of whether it satisfies such test.

Subparagraph (B) shall only apply to the extent provided by the Secretary.

(2) EFFECTIVE DATES.—

(A) REGULATIONS.—The regulation required by paragraph (1) shall apply to years beginning after December 31, 2003.

(B) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under paragraph (1)(A) shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(b) COVERAGE TEST.—

(1) IN GENERAL.—Section 410(b)(1) (relating to minimum coverage requirements) is amended by adding at the end the following:

"(D) In the case that the plan fails to meet the requirements of subparagraphs (A), (B) and (C), the plan—

"(i) satisfies subparagraph (B), as in effect immediately before the enactment of the Tax Reform Act of 1986,

"(ii) is submitted to the Secretary for a determination of whether it satisfies the requirement described in clause (i), and

"(iii) satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of this subparagraph.

Clause (ii) shall apply only to the extent provided by the Secretary.".

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to years beginning after December 31, 2003.

(B) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under regulations prescribed by the Secretary under section 410(b)(1)(D) of the Internal Revenue Code of 1986 shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(c) LINE OF BUSINESS RULES.—The Secretary of the Treasury shall, on or before December 31, 2003, modify the existing regulations issued under section 414(r) of the Internal Revenue Code of 1986 in order to expand (to the extent that the Secretary determines appropriate) the ability of a pension plan to demonstrate compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

SEC. 610. EXTENSION TO ALL GOVERNMENTAL PLANS OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL PLANS.

(a) IN GENERAL.—

(1) Subparagraph (G) of section 401(a)(5) of the Internal Revenue Code of 1986 and subparagraph (H) of section 401(a)(26) are each amended by striking "section 414(d))" and all that follows and inserting "section 414(d)).".

(2) Subparagraph (G) of section 401(k)(3) and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 are each amended by striking "maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)".

(b) CONFORMING AMENDMENTS.—

(1) The heading for subparagraph (G) of section 401(a)(5) is amended to read as follows: "GOVERNMENTAL PLANS.—".

(2) The heading for subparagraph (H) of section 401(a)(26) is amended to read as follows: "EXCEPTION FOR GOVERNMENTAL PLANS.—".

(3) Subparagraph (G) of section 401(k)(3) is amended by inserting "GOVERNMENTAL PLANS.—" after "(G)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2001.

SEC. 611. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) EXPANSION OF PERIOD.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—

(A) IN GENERAL.—Subparagraph (A) of section 417(a)(6) is amended by striking "90-day" and inserting "180-day".

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code of 1986 to substitute "180 days" for "90 days" each place it appears in Treasury Regulations sections 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).

(2) AMENDMENT OF ERISA.—Section 205(c)(7)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended by striking "90-day" and inserting "180-day".

(3) EFFECTIVE DATE.—The amendments made by paragraph (1)(A) and (2) and the modifications required by paragraph (1)(B) shall apply to years beginning after December 31, 2001.

(b) CONSENT REGULATION INAPPLICABLE TO CERTAIN DISTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) EFFECTIVE DATE.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2001.

SEC. 612. ANNUAL REPORT DISSEMINATION.

(a) REPORT AVAILABLE THROUGH ELECTRONIC MEANS.—Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is amended by adding at the end the following new sentence: "The requirement to furnish information under the previous sentence shall be satisfied if the administrator makes such information reasonably available through electronic means or other new technology.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to reports for years beginning after December 31, 2000.

SEC. 613. TECHNICAL CORRECTIONS TO SAVER ACT.

Section 517 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1147) is amended—

(1) in subsection (a), by striking "2001 and 2005 on or after September 1 of each year involved" and inserting "2001, 2005, and 2009 in the month of September of each year involved";

(2) in subsection (b), by adding at the end the following new sentence: "To effectuate the purposes of this paragraph, the Secretary may enter into a cooperative agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301 et seq.), with the American Savings Education Council.";

(3) in subsection (e)(2)—

(A) by striking "Committee on Labor and Human Resources" in subparagraph (D) and inserting "Committee on Health, Education, Labor, and Pensions";

(B) by striking subparagraph (F) and inserting the following:

"(F) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;";

(C) by redesignating subparagraph (G) as subparagraph (J); and

(D) by inserting after subparagraph (F) the following new subparagraphs:

"(G) the Chairman and Ranking Member of the Committee on Finance of the Senate;

"(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;

"(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and";

(4) in subsection (e)(3)(A)—

(A) by striking "There shall be no more than 200 additional participants." and inserting "The participants in the National Summit shall also include additional participants appointed under this subparagraph.";

(B) by striking "one-half shall be appointed by the President," in clause (i) and inserting "not more than 100 participants shall be appointed under this clause by the President,", and by striking "and" at the end of clause (i);

(C) by striking "one-half shall be appointed by the elected leaders of Congress" in clause (ii) and inserting "not more than 100 participants shall be appointed under this clause by the elected leaders of Congress", and by striking the period at the end of clause (ii) and inserting "; and";

(D) by adding at the end the following new clause:

"(iii) The President, in consultation with the elected leaders of Congress referred to in subsection (a), may appoint under this clause additional participants to the National Summit. The number of such additional participants appointed under this clause may not exceed the lesser of 3 percent of the total number of all additional participants appointed under this paragraph, or 10. Such additional participants shall be appointed from persons nominated by the organization referred to in subsection (b)(2) which is made up of private sector businesses and associations partnered with Government entities to promote long term financial security in retirement through savings and with which the Secretary is required thereunder to consult and cooperate and shall not be Federal, State, or local government employees.";

(5) in subsection (e)(3)(B), by striking "January 31, 1998" in subparagraph (B) and inserting "May 1, 2001, May 1, 2005, and May 1, 2009, for each of the subsequent summits, respectively";

(6) in subsection (f)(1)(C), by inserting ", no later than 90 days prior to the date of the commencement of the National Summit," after "comment" in paragraph (1)(C);

(7) in subsection (g), by inserting ", in consultation with the congressional leaders specified in subsection (e)(2)," after "report";

(8) in subsection (i)—

(A) by striking "beginning on or after October 1, 1997" in paragraph (1) and inserting "2001, 2005, and 2009"; and

(B) by adding at the end the following new paragraph:

"(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions accepted in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph."; and

(9) in subsection (k)—

(A) by striking "shall enter into a contract on a sole-source basis" and inserting "may enter into a contract on a sole-source basis"; and

(B) by striking "fiscal year 1998" and inserting "fiscal years 2001, 2005, and 2009".

TITLE VII—OTHER ERISA PROVISIONS

SEC. 701. MISSING PARTICIPANTS.

(a) IN GENERAL.—Section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

"(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

"(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

"(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant's benefits to the corporation upon termination of the plan.

"(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

"(A) to the corporation, or

"(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

"(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

"(A) in a single sum (plus interest), or

"(B) in such other form as is specified in regulations of the corporation.

"(4) PLANS DESCRIBED.—A plan is described in this paragraph if—

"(A) the plan is a pension plan (within the meaning of section 3(2))—

"(i) to which the provisions of this section do not apply (without regard to this subsection), and

"(ii) which is not a plan described in paragraphs (2) through (11) of section 4021(b), and

"(B) at the time the assets are to be distributed upon termination, the plan—

"(i) has missing participants, and

"(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

"(5) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions made after final regulations implementing subsections (c) and (d) of section 4050 of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)), respectively, are prescribed.

SEC. 702. REDUCED PBGC PREMIUM FOR NEW PLANS OF SMALL EMPLOYERS.

(a) IN GENERAL.—Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

(1) in clause (i), by inserting "other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined)," after "single-employer plan,",

(2) in clause (iii), by striking the period at the end and inserting ", and", and

(3) by adding at the end the following new clause:

"(iv) in the case of a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined) for the plan year, $5 for each individual who is a participant in such plan during the plan year.".

(b) DEFINITION OF NEW SINGLE-EMPLOYER PLAN.—Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following new subparagraph:

"(F)(i) For purposes of this paragraph, a single-employer plan maintained by a contributing sponsor shall be treated as a new single-employer plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of such plan, the sponsor or any member of such sponsor's controlled group (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new single-employer plan.

"(ii)(I) For purposes of this paragraph, the term 'small employer' means an employer which on the first day of any plan year has, in aggregation with all members of the controlled group of such employer, 100 or fewer employees.

"(II) In the case of a plan maintained by two or more contributing sponsors that are not part of the same controlled group, the employees of all contributing sponsors and controlled groups of such sponsors shall be aggregated for purposes of determining whether any contributing sponsor is a small employer.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plans established after December 31, 2001.

SEC. 703. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR NEW AND SMALL PLANS.

(a) NEW PLANS.—Subparagraph (E) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by adding at the end the following new clause:

"(v) In the case of a new defined benefit plan, the amount determined under clause (ii) for any plan year shall be an amount equal to the product of the amount determined under clause (ii) and the applicable percentage. For purposes of this clause, the term 'applicable percentage' means—

"(I) 0 percent, for the first plan year.

"(II) 20 percent, for the second plan year.

"(III) 40 percent, for the third plan year.

"(IV) 60 percent, for the fourth plan year.

"(V) 80 percent, for the fifth plan year.

For purposes of this clause, a defined benefit plan (as defined in section 3(35)) maintained by a contributing sponsor shall be treated as a new defined benefit plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of the plan, the sponsor and each member of any controlled group including the sponsor (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new plan.".

(b) SMALL PLANS.—Paragraph (3) of section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)), as amended by section 702(b), is amended—

(1) by striking "The" in subparagraph (E)(i) and inserting "Except as provided in subparagraph (G), the", and

(2) by inserting after subparagraph (F) the following new subparagraph:

"(G)(i) In the case of an employer who has 25 or fewer employees on the first day of the plan year, the additional premium determined under subparagraph (E) for each participant shall not exceed $5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

"(ii) For purposes of clause (i), whether an employer has 25 or fewer employees on the first day of the plan year is determined taking into consideration all of the employees of all members of the contributing sponsor's controlled group. In the case of a plan maintained by two or more contributing sponsors, the employees of all contributing sponsors and their controlled groups shall be aggregated for purposes of determining whether the 25-or-fewer-employees limitation has been satisfied.".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to plans established after December 31, 2001.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2001.

SEC. 704. AUTHORIZATION FOR PBGC TO PAY INTEREST ON PREMIUM OVERPAYMENT REFUNDS.

(a) IN GENERAL.—Section 4007(b) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1307(b)) is amended—

(1) by striking "(b)" and inserting "(b)(1)", and

(2) by inserting at the end the following new paragraph:

"(2) The corporation is authorized to pay, subject to regulations prescribed by the corporation, interest on the amount of any overpayment of premium refunded to a designated payor. Interest under this paragraph shall be calculated at the same rate and in the same manner as interest is calculated for underpayments under paragraph (1).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to interest accruing for periods beginning not earlier than the date of the enactment of this Act.

SEC. 705. SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS.

(a) MODIFICATION OF PHASE-IN OF GUARANTEE.—Section 4022(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended to read as follows:

"(5)(A) For purposes of this paragraph, the term 'majority owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

"(i) owns the entire interest in an unincorporated trade or business,

"(ii) in the case of a partnership, is a partner who owns, directly or indirectly, 50 percent or more of either the capital interest or the profits interest in such partnership, or

"(iii) in the case of a corporation, owns, directly or indirectly, 50 percent or more in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).

"(B) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall equal the product of—

"(i) a fraction (not to exceed 1) the numerator of which is the number of years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10, and

"(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.".

(b) MODIFICATION OF ALLOCATION OF ASSETS.—

(1) Section 4044(a)(4)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344(a)(4)(B)) is amended by striking "section 4022(b)(5)" and inserting "section 4022(b)(5)(B)".

(2) Section 4044(b) of such Act (29 U.S.C. 1344(b)) is amended—

(A) by striking "(5)" in paragraph (2) and inserting "(4), (5),", and

(B) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.".

(c) CONFORMING AMENDMENTS.—

(1) Section 4021 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321) is amended—

(A) in subsection (b)(9), by striking "as defined in section 4022(b)(6)", and

(B) by adding at the end the following new subsection:

"(d) For purposes of subsection (b)(9), the term 'substantial owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

"(1) owns the entire interest in an unincorporated trade or business,

"(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

"(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of paragraph (3), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).".

(2) Section 4043(c)(7) of such Act (29 U.S.C. 1343(c)(7)) is amended by striking "section 4022(b)(6)" and inserting "section 4021(d)".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan terminations—

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) after December 31, 2001, and

(B) under section 4042 of such Act (29 U.S.C. 1342) with respect to which proceedings are instituted by the corporation after such date.

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (c) shall take effect on January 1, 2002.

SEC. 706. CIVIL PENALTIES FOR BREACH OF FIDUCIARY RESPONSIBILITY.

(a) IMPOSITION AND AMOUNT OF PENALTY MADE DISCRETIONARY.—Section 502(l)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(l)(1)) is amended—

(1) by striking "shall" and inserting "may", and

(2) by striking "equal to" and inserting "not greater than".

(b) APPLICABLE RECOVERY AMOUNT.—Section 502(l)(2) of such Act (29 U.S.C. 1132(l)(2)) is amended to read as follows:

"(2) For purposes of paragraph (1), the term 'applicable recovery amount' means any amount which is recovered from any fiduciary or other person (or from any other person on behalf of any such fiduciary or other person) with respect to a breach or violation described in paragraph (1) on or after the 30th day following receipt by such fiduciary or other person of written notice from the Secretary of the violation, whether paid voluntarily or by order of a court in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5). The Secretary may, in the Secretary's sole discretion, extend the 30-day period described in the preceding sentence.".

(c) OTHER RULES.—Section 502(l) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(l)) is amended by adding at the end the following new paragraph:

"(5) A person shall be jointly and severally liable for the penalty described in paragraph (1) to the same extent that such person is jointly and severally liable for the applicable recovery amount on which the penalty is based.

"(6) No penalty shall be assessed under this subsection unless the person against whom the penalty is assessed is given notice and opportunity for a hearing with respect to the violation and applicable recovery amount.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to any breach of fiduciary responsibility or other violation of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 occurring on or after the date of enactment of this Act.

(2) TRANSITION RULE.—In applying the amendment made by subsection (b) (relating to applicable recovery amount), a breach or other violation occurring before the date of enactment of this Act which continues after the 180th day after such date (and which may have been discontinued at any time during its existence) shall be treated as having occurred after such date of enactment.

SEC. 707. BENEFIT SUSPENSION NOTICE.

(a) MODIFICATION OF REGULATION.—The Secretary of Labor shall modify the regulation under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to provide that the notification required by such regulation—

(1) in the case of an employee who returns to work for a former employer after commencement of payment of benefits under the plan shall—

(A) be made during the first calendar month or payroll period in which the plan withholds payments, and

(B) if a reduced rate of future benefit accruals will apply to the returning employee (as of the first date of participation in the plan by the employee after returning to work), include a statement that the rate of future benefit accruals will be reduced, and

(2) in the case of any employee who is not described in paragraph (1)—

(A) may be included in the summary plan description for the plan furnished in accordance with section 104(b) of such Act (29 U.S.C. 1024(b)), rather than in a separate notice, and

(B) need not include a copy of the relevant plan provisions.

(b) EFFECTIVE DATE.—The modification made under this section shall apply to plan years beginning after December 31, 2001.

TITLE VIII—PLAN AMENDMENTS

SEC. 801. PROVISIONS RELATING TO PLAN AMENDMENTS.

(a) IN GENERAL.—If this section applies to any plan or contract amendment—

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A); and

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this Act, or pursuant to any regulation issued under this Act; and

(B) on or before the last day of the first plan year beginning on or after January 1, 2004.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting "2006" for "2004".

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan); and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

PURPOSE

The revenue provisions of the bill, H.R. 10, as amended, included in the Committee bill (the "Comprehensive Retirement Security and Pension Reform Act of 2001") (the "bill"), provide for (1) modifying Individual Retirement Arrangement contribution limits (Title I); (2) expanding coverage (Title II); (3) enhancing fairness for women (Title III); (4) increasing portability for participants (Title IV); (5) strengthening pension security and enforcement (Title V); (6) reducing regulatory burdens (Title VI); (7) ERISA provisions (Title VII); and (8) special rules for plan amendments relating to the bill (Title VIII).

The bill provides net tax reductions of over $16 billion over fiscal years 2002–2006. This will provide needed retirement security and pension reform.

SUMMARY

I. Individual Retirement Arrangements ("IRAs")

Increase in IRA contribution limit.—The bill increases the annual dollar IRA contribution limit from $2,000 to $3,000 in 2002, $4,000 in 2003, and $5,000 in 2004, with indexing in $500 increments thereafter.

Catch-up contributions.—The bill accelerates the increase of the IRA maximum contribution limit for individuals age 50 and older. The limit for such individuals is $5,000 beginning in 2002, with indexing in $500 increments after 2004.

II. Expanding Coverage

Increase in benefit and contribution limits.—The bill increases the dollar limit on deferrals under section 401(k) plans, section 403(b) annuities, and salary reduction SEPs to $11,000 in 2002, $12,000 in 2003, $13,000 in 2004, $14,000 in 2005, and $15,000 in 2006. After 2006, the limit is indexed in $500 increments. The bill increases the maximum annual elective deferrals that may be made to a SIMPLE plan to $7,000 in 2002, $8,000 in 2003, $9,000 in 2004, and $10,000 in 2005. After 2005, the limit is indexed in $500 increments. The bill increases the dollar limit on deferrals under a section 457 plan to $11,000 in 2002, $12,000 in 2003, $13,000 in 2004, $14,000 in 2005, and $15,000 in 2006. After 2006, the limit is indexed in $500 increments. The limit is twice the otherwise applicable dollar limit in the three years prior to retirement. Effective in 2002, the bill: increases the $140,000 annual benefit limit for defined benefit plans to $160,000 (indexed in $5,000 increments) and lowers the early retirement age to 62 and the normal retirement age to 65 for purposes of applying the limit; increases the $35,000 annual contribution limit for defined contribution plans to $40,000 (indexed in $1,000 increments); and increases the limit on compensation that may be taken into account under a plan to $200,000 (indexed in $5,000 increments).

Plan loans for S corporation shareholders, partners, and sole proprietors.—The bill generally eliminates the special present-law rules relating to plan loans made to an owner-employee. Thus, the general statutory exemption applies to such transactions. Present law applies with respect to IRAs. The provision is effective with respect to loans made in years beginning after December 31, 2001.

Modification of top-heavy rules.—The bill provides that a safe-harbor section 401(k) plan is not a top-heavy plan and that matching contributions may be taken into account in satisfying the minimum contribution requirements for top-heavy plans. In addition, the bill simplifies the definition of key employee and the determination of top-heavy status and repeals the family attribution rule used to determine whether an individual is a key employee by reason of being a five-percent owner of the employer. The provision is effective for years beginning after December 31, 2001.

Elective deferrals not taken into account for purposes of deduction limits.—The bill provides that elective deferral contributions are not subject to the qualified plan deduction limits, and the application of a deduction limitation to any other employer contribution to a qualified retirement plan does not take into account elective deferral contributions. The provision is effective for years beginning after December 31, 2001.

Repeal of coordination requirements for deferred compensation plans of State and local governments and tax-exempt organizations.—For years beginning after December 31, 2001, the bill repeals the rules coordinating the section 457 dollar limit with contributions under other types of plans.

Eliminate IRS user fees for certain determination letter requests regarding employer plans.—Under the bill, an employer with no more than 100 employees is not required to pay a user fee for any determination letter request made during the first five plan years or before the end of any remedial amendment period beginning within the first five plan years with respect to the qualified status of a retirement plan that the employer maintains. The provision is effective for determination letter requests made after December 31, 2001.

Deduction limits.—The bill provides that, for purposes of the qualified plan deduction limits, compensation includes elective deferrals and certain other salary reduction amounts. In addition, the bill increases the limit on deductible contributions under a profit-sharing or stock bonus plan from 15 percent to 20 percent of compensation. The provision is effective for years beginning after December 31, 2001.

Option to treat elective deferrals as after-tax contributions.—The bill provides that a section 401(k) plan or a section 403(b) annuity may permit a participant to elect to have all or a portion of the participant's elective deferrals under the plan treated as designated plus contributions. A qualified distribution from a participant's designated plus contributions account is not includible in the participant's gross income. Designated plus contributions are generally otherwise treated the same as elective deferrals for purposes of the qualified plan rules. The provision is effective for taxable years beginning after December 31, 2001.

Treatment of self-employment income of members of certain religious faiths.—The bill amends the definition of compensation for purposes of qualified plans and SIMPLE IRAs to include an individual's net earnings that would be subject to SECA taxes but for the fact that the individual is covered by a religious exemption. The provision is effective for taxable years beginning after December 31, 2001.

Certain nonresident aliens excluded in applying minimum coverage requirements.—The bill modifies the minimum coverage rules so that compensation is not treated as U.S. source income if the compensation is paid for labor or services performed by a nonresident alien in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States. As a result, such nonresident aliens are excluded from consideration in the application of the minimum coverage requirements. The provision is effective with respect to plan years beginning after December 31, 2001.

III. Enhancing Fairness for Women

Additional salary reduction catch-up contributions.—The bill permits individuals who are age 50 or older to make additional contributions to a section 401(k) (or similar plan). The maximum permitted additional contribution is $5,000 (indexed in 2007 and thereafter) or the participant's compensation reduced by other elective deferrals for the year. Catch-up contributions to a section 401(k) (or similar) plan are not subject to any other contribution limits and are not taken into account in applying other contribution limits. Catch-up contributions are subject to nondiscrimination rules. The provision applies to contributions in taxable years beginning after December 31, 2001.

Equitable treatment for contributions of employees to defined contribution plans.—The bill (1) increases the 25 percent of compensation limitation on annual additions under a defined contribution plan to 100 percent, (2) conforms the limits on contributions to a tax-sheltered annuity to the limits applicable to tax-qualified plans, and (3) increases the 33⅓ percent of compensation limitation on deferrals under a section 457 plan to 100 percent of compensation. The provision is effective for years beginning after December 31, 2001.

Faster vesting of employer matching contributions.—Under the bill, employer matching contributions have to vest at least as rapidly as under three-year cliff vesting or under six-year graded vesting that provides for a nonforfeitable right to 20 percent of employer matching contributions for each year of service beginning with the participant's second year of service and ending with 100 percent after 6 years of service. The provision is effective for contributions for plan years beginning after December 31, 2001, with a delayed effective date for plans maintained pursuant to a collective bargaining agreement.

Modifications to minimum distribution rules.—The bill applies the present-law rules applicable if the participant dies before distribution of minimum benefits has begun to all post-death distributions. The bill reduces the excise tax on failures to satisfy the minimum distribution rules to 10 percent of the amount that was required to be distributed but was not distributed. The Treasury is directed to revise the life expectancy tables under the regulations relating to the minimum distribution rules to reflect current life expectancy. The provision is effective for years beginning after December 31, 2001.

Clarification of tax treatment of division of section 457 plan benefits upon divorce.—The bill applies the taxation rules for qualified plan distributions pursuant to a QDRO to distributions made pursuant to a domestic relations order from a section 457 plan. In addition, a section 457 plan is not treated as violating the restrictions on distributions from such plans due to payments to an alternate payee under a QDRO. The provision is effective for transfers, distributions, and payments made after December 31, 2001.

Hardship withdrawals.—The bill directs the Secretary of the Treasury to revise the applicable regulations (to be effective for years beginning after December 31, 2001) to reduce from 12 months to six months the period during which an employee must be prohibited from making elective contributions and employee contributions in order for a distribution to be deemed necessary to satisfy an immediate and heavy financial need. The bill also provides that a hardship distribution from a qualified plan or a section 403(b) plan is not an eligible rollover distribution. The provision directing the Secretary to revise the regulations is effective on the date of enactment; the provision that hardship distributions are not eligible for rollover is effective for years beginning after December 31, 2001.

Pension coverage for domestic and similar workers.—The 10-percent excise tax on nondeductible contributions does not apply to contributions to a SIMPLE 401(k) plan or SIMPLE IRA that are nondeductible solely because they are not made in connection with a trade or business of the employer (e.g., contributions made for domestic workers). No inference is intended with respect to present law in the case of contributions that are not made in connection with the employer's trade or business. The provision is effective for years beginning after December 31, 2001.

IV. Increasing Portability for Participants

Rollovers of retirement plan and IRA distributions.—The bill provides that eligible rollover distributions from qualified retirement plans, section 403(b) annuities, IRAs and governmental section 457 plans generally can be rolled over to any of such plans or arrangements. The direct rollover and withholding rules are extended to distributions from a governmental section 457 plan. The bill provides that employee after-tax contributions can be rolled over into another qualified plan or a traditional IRA. In the case of a rollover from a qualified plan to another qualified plan, the rollover can be accomplished only through a direct rollover. The bill provides that surviving spouses can roll over distributions to a qualified plan, section 403(b) annuity, or governmental section 457 plan in which the spouse participates. The provision is effective for distributions made after December 31, 2001.

Waiver of 60-day rule.—The bill provides that the Secretary may waive the 60-day rollover period if the failure to waive such requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. The provision applies to distributions made after December 31, 2001.

Treatment of forms of distribution.—Under the bill, if certain requirements are satisfied, a defined contribution plan may eliminate optional forms of benefit (1) in connection with certain transfers of benefits, or (2) if a single sum distribution is offered. In addition, the Secretary is to provide for circumstances under which early retirement benefits, retirement-type subsidies, or an optional form of benefit may be reduced or eliminated if the rights of participants are not adversely affected in more than a de minimis manner. The provision is effective for years beginning after December 31, 2001, except that the direction to issue regulations is effective on date of enactment.

Rationalization of restrictions on distributions.—The bill modifies the distribution restrictions applicable to section 401(k) plans, section 403(b) annuities, and section 457 plans to provide that distributions may occur upon severance from employment rather than separation from service. The provision is effective for distributions after December 31, 2001.

Purchase of service credit under governmental pension plans.—Under the bill, a participant in a State or local governmental plan is not required to include in gross income a direct trustee-to-trustee transfer to a governmental defined benefit plan from a section 403(b) annuity or a section 457 plan if the transferred amount is used (1) to purchase permissive service credits under the plan, or (2) to repay certain contributions. The provision is effective for transfers after December 31, 2001.

Employers may disregard rollovers for purposes of cash-out rules.—Under the bill, a plan is permitted to disregard benefits attributable to rollover contributions for purposes of the cash-out rules. The provision is effective for distributions after December 31, 2001.

Minimum distribution and inclusion requirements for section 457 plans.—Under the bill amounts deferred under a governmental section 457 plan are includible in income when paid, and section 457 plans are subject to the same minimum distributions rules as qualified plans. The provision is effective for distributions after December 31, 2001.

V. Strengthening Pension Security And Enforcement

Phase in repeal of 160 percent of current liability full funding limit; deduction for contributions to fund termination liability.—Under the bill, the current liability full funding limit is 165 percent of current liability for plan years beginning in 2002 and 170 percent for plan years beginning in 2003. The current liability full funding limit is repealed for plan years beginning in 2004 and thereafter. The special rule allowing a deduction for unfunded current liability generally is extended to all defined benefit pension plans covered by the PBGC, effective for years beginning after December 31, 2001. The General Accounting Office is directed to conduct a study of whether certain present-law rules create hardships or disincentives to fund defined benefit pension plans in the case of economically distressed taxpayers. The study is to consider whether funding of underfunded defined benefit plans would be enhanced if contributions to such plans were eligible for 10-year specified liability carryback treatment.

Excise tax relief for sound pension funding.—If an employer elects, contributions in excess of the current liability full funding limit are not subject to the excise tax on nondeductible contributions. The provision is effective for years beginning after December 31, 2001.

Notice of significant reduction in plan benefit accruals.—The bill requires the plan administrator of a pension plan (other than governmental plans and certain church plans) to notify plan participants in advance of an amendment that significantly reduces the rate of future benefit accruals. The notice must include sufficient information to allow participants to understand the effect of the amendment. The bill authorizes regulations to provide for the use of new technologies in providing the required notice and to provide a simplified notice or exemption for plans with less than 100 participants or if participants are given a choice of benefits under the old or the new plan formula. An excise tax applies if the required notice is not provided. The bill also directs the Secretary of the Treasury to report on the effects of conversions of traditional defined benefit plans to cash balance or hybrid formula plans. The provision is generally effective for plan amendments taking effect on or after the date of enactment.

Modifications to section 415 limits for multiemployer plans.—The bill provides that the 100 percent of compensation limitation does not apply to defined benefit multiemployer plans. In addition, the bill modifies the aggregation rules applicable to multiemployer plans. The provision is effective for years beginning after December 31, 2001.

Prohibited allocations of stock in an S corporation ESOP.—Under the bill, if certain shareholders own at least 50 percent of an S corporation, they are prohibited from receiving allocations under the S corporation's ESOP. If a prohibited allocation is made, it is treated as a distribution (i.e., included in income) and certain excise taxes are imposed on the S corporation. The provision is generally effective for years beginning after December 31, 2004, with a special rule for ESOPs established after March 14, 2001, or maintained by an employer that becomes an S corporation after March 14, 2001.

VI. Reducing Regulatory Burdens

Modification of timing of plan valuations.—The bill permits a defined benefit plan with assets of at least 125 percent of current liability to use a valuation date within the prior plan year. The provision is effective for plan years beginning after December 31, 2001.

ESOP dividends may be reinvested without loss of dividend deduction.—Under the bill, an employer is entitled to deduct dividends that, at the election of plan participants or beneficiaries, are paid to the plan and reinvested in employer securities. The provision is effective for taxable years beginning after December 31, 2001.

Repeal transition rule relating to certain highly compensated employees.—The bill repeals the special definition of highly compensated employee under the Tax Reform Act of 1986. The provision is effective for plan years beginning after December 31, 2001.

Employees of tax-exempt entities.—The bill directs the Treasury Department to revise its regulations under section 410(b) to provide that, if certain requirements are satisfied, employees of a tax-exempt charitable organization who are eligible to make salary reduction contributions under a section 403(b) annuity may be treated as excludable employees for purposes of testing a section 401(k) plan. The provision is effective on the date of enactment.

Treatment of employer-provided retirement advice.—Under the bill, qualified retirement planning advice or information provided to an employee and his or her spouse by an employer maintaining a qualified plan are generally excludable from income and wages. The provision is effective with respect to taxable years beginning after December 31, 2001.

Reporting simplification.—The bill directs the Secretary of the Treasury to provide an exemption from the annual return requirement for a plan that covers only the sole owner of a business that maintains the plan (and such owner's spouse), or partners in a partnership that maintains the plan (and such partners' spouses), if the total value of the plan assets as of the end of the plan year and all prior plan years does not exceed $250,000 and the plan meets certain other requirements. In addition, the Secretary of the Treasury and the Secretary of Labor are directed to provide simplified reporting requirements for plans with fewer than 25 employees. The provision is effective on January 1, 2002.

Improvement to Employee Plans Compliance Resolution System.—The bill directs the Secretary of the Treasury to continue to update and improve EPCRS, giving special attention to (1) increasing the awareness and knowledge of small employers concerning the availability and use of EPCRS, (2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures, (3) extending the duration of the self-correction period under SCP for significant compliance failures, (4) expanding the availability to correct insignificant compliance failures under SCP during audit, and (5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure. The provision is effective on the date of enactment.

Repeal of the multiple use test.—The bill repeals the multiple use test, effective for years beginning after December 31, 2001.

Flexibility in nondiscrimination, coverage, and line of business rules.—The bill directs the Secretary of the Treasury to modify the regulations dealing with line of business, nondiscrimination, and minimum coverage, so that plans may use facts and circumstances and prior-law tests to satisfy these rules. The provision is generally effective on the date of enactment, except the changes relating to minimum coverage are generally effective for years beginning after December 31, 2003.

Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local government plans.—Under the bill, a plan maintained by any governmental entity is exempt from the nondiscrimination and minimum participation rules. The provision is effective for plan years beginning after December 31, 2001.

Notice and consent period regarding distributions.—Under the bill, a qualified retirement plan is required to provide the applicable distribution notice no less than 30 days and no more than 180 days before the date distribution commences. The Secretary of the Treasury is directed to modify the applicable regulations to reflect the extension of the notice period to 180 days and to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt. The provision is effective for years beginning after December 31, 2001.

VII. ERISA provisions

Extension of PBGC missing participants program.—The bill directs the PBGC to issue missing participant rules for multiemployer plans. In addition, in the case of certain plans not subject to the PBGC termination insurance program, missing participants' benefits may be transferred to the PBGC upon plan termination. The provision is effective for distributions from terminating plans that occur after the PBGC has adopted final regulations implementing the provision.

Reduce PBGC premiums for small and new plans.—Under the bill the flat-rate PBGC premium is $5 per plan participant for the first five years of a new single-employer plan of an employer with 100 or fewer employees. The bill also provides that, for a new defined benefit plan, the variable-rate premium is phased in over a six-year period and, for a plan maintained by an employer with 25 or fewer employees, the variable-rate premium is no more than $5 multiplied by the number of plan participants at the end of the preceding year. The changes in premiums for new plans are effective with respect to plans established after December 31, 2001. The reduction of the variable-rate premium is effective with respect to plan years beginning after December 31, 2001.

Authorization for PBGC to pay interest on premium overpayment refunds.—The bill allows the PBGC to pay interest on overpayments made by premium payors. The provision is effective with respect to interest accruing for periods beginning not earlier than the date of enactment.

Rules for substantial owner benefits in terminated plans.—The bill reduces the phase-in periods for guaranteed benefits for a 10–percent or more owner ("substantial owner") in the case of plan termination. The bill also applies the allocation of asset rules to a substantial owner with less than 50 percent ownership in the same manner as other participants. The provision is effective for plan terminations with respect to which notices of intent to terminate are provided, or for which termination proceedings are instituted by the PBGC, after December 31, 2001.

VIII. Provisions relating to plan amendments

Any amendments to a plan or annuity contract required to be made by the bill are not required to be made before the last day of the first plan year beginning on or after January 1, 2004 (January 1, 2006 in the case of a governmental plan). Amendments may be retroactively effective if certain requirements are met, including that the plan was operated in accordance with the requirements of the bill. The bill also authorizes the Secretary of Treasury to provide appropriate exceptions to the relief from the prohibition on reductions in accrued benefits. The provision is effective on the date of enactment.

B. Background and Need for Legislation

The provisions approved by the Committee reflect the need for tax relief for retirement security and pension reforms.

C. Legislative History

COMMITTEE ACTION

The Committee on Ways and Means marked up the provisions of the bill on April 25, 2001, and reported the provisions, as amended, on April 25, 2001, by a roll call vote of 35 yeas and 6 nays, with a quorum present.

COMMITTEE HEARING

A full Committee hearing on the provisions of the President's individual income tax proposals was held on March 21, 2001.

II. EXPLANATION OF THE BILL

TITLE I. INDIVIDUAL RETIREMENT ARRANGEMENTS ("IRAS")

(Sec. 101 of the bill and secs. 219, 408, and 408A of the Code)

PRESENT LAW

In general

There are two general types of individual retirement arrangements ("IRAs") under present law: traditional IRAs, to which both deductible and nondeductible contributions may be made, and Roth IRAs. The Federal income tax rules regarding each type of IRA (and IRA contribution) differ.

Traditional IRAs

Under present law, an individual may make deductible contributions to an IRA up to the lesser of $2,000 or the individual's compensation if neither the individual nor the individual's spouse is an active participant in an employer-sponsored retirement plan. In the case of a married couple, deductible IRA contributions of up to $2,000 can be made for each spouse (including, for example, a homemaker who does not work outside the home), if the combined compensation of both spouses is at least equal to the contributed amount. If the individual (or the individual's spouse) is an active participant in an employer-sponsored retirement plan, the $2,000 deduction limit is phased out for taxpayers with adjusted gross income ("AGI") over certain levels for the taxable year.

The AGI phase-out limits for taxpayers who are active participants in employer-sponsored plans are as follows.

Single Taxpayers

Taxable years beginning in	*Phase-out range*
2001	$33,000–43,000
2002	34,000–44,000
2003	40,000–50,000
2004	45,000–55,000
2005 and thereafter	50,000–60,000

Joint Returns

2000	53,000–63,000
2002	54,000–64,000
2003	60,000–70,000
2004	65,000–75,000
2005	70,000–80,000
2006	75,000–85,000
2007 and thereafter	80,000–100,000

The AGI phase-out range for married taxpayers filing a separate return is $0 to $10,000.

If the individual is not an active participant in an employer-sponsored retirement plan, but the individual's spouse is, the $2,000 deduction limit is phased out for taxpayers with AGI between $150,000 and $160,000.

To the extent an individual cannot or does not make deductible contributions to an IRA or contributions to a Roth IRA, the individual may make nondeductible contributions to a traditional IRA.

Amounts held in a traditional IRA are includible in income when withdrawn (except to the extent the withdrawal is a return of nondeductible contributions). Includible amounts withdrawn prior to attainment of age 59½ are subject to an additional 10-percent early withdrawal tax, unless the withdrawal is due to death or disability, is made in the form of certain periodic payments, is used to pay medical expenses in excess of 7.5 percent of AGI, is used to purchase health insurance of an unemployed individual, is used for education expenses, or is used for first-time homebuyer expenses of up to $10,000.

Roth IRAs

Individuals with AGI below certain levels may make nondeductible contributions to a Roth IRA. The maximum annual contribution that may be made to a Roth IRA is the lesser of $2,000 or the individual's compensation for the year. The contribution limit is reduced to the extent an individual makes contributions to any other IRA for the same taxable year. As under the rules relating to IRAs generally, a contribution of up to $2,000 for each spouse may be made to a Roth IRA provided the combined compensation of the spouses is at least equal to the contributed amount. The maximum annual contribution that can be made to a Roth IRA is phased out for single individuals with AGI between $95,000 and $110,000 and for joint filers with AGI between $150,000 and $160,000.

Taxpayers with modified AGI of $100,000 or less generally may convert a traditional IRA into a Roth IRA. The amount converted is includible in income as if a withdrawal had been made, except that the 10-percent early withdrawal tax does not apply and, if the conversion occurred in 1998, the income inclusion may be spread ratably over 4 years. Married taxpayers who file separate returns cannot convert a traditional IRA into a Roth IRA.

Amounts held in a Roth IRA that are withdrawn as a qualified distribution are not includible in income, or subject to the additional 10-percent tax on early withdrawals. A qualified distribution is a distribution that (1) is made after the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA, and (2) which is made after attainment of age 59½, on account of death or disability, or is made for first-time homebuyer expenses of up to $10,000.

Distributions from a Roth IRA that are not qualified distributions are includible in income to the extent attributable to earnings, and subject to the 10-percent early withdrawal tax (unless an exception applies).[1] The same exceptions to the early withdrawal tax that apply to IRAs apply to Roth IRAs.

REASONS FOR CHANGE

The Committee is concerned about the low national savings rate, and that individuals may not be saving adequately for retirement. The present-law IRA contribution limits have not been increased since 1981. The Committee believes that the limits should be raised in order to allow greater savings opportunities.

The Committee understands that, for a variety of reasons, older individuals may not have been saving sufficiently for retirement. For example, some individuals, especially women, may have left the workforce temporarily in order to care for children. Such individuals may have missed retirement savings options that would have been available had they remained in the workforce. Thus, the Committee believes it appropriate to accelerate the increase in the IRA contribution limits for such individuals.

[1] Early distribution of converted amounts may also accelerate income inclusion of converted amounts that are taxable under the 4-year rule applicable to 1998 conversions.

EXPLANATION OF PROVISION

Increase in annual contribution limits

The provision increases the maximum annual dollar contribution limit for IRA contributions from $2,000 to $3,000 in 2002, $4,000 in 2003, and $5,000 in 2004. The limit is indexed in $500 increments in 2005 and thereafter.

Additional catch-up contributions

The provision accelerates the increase of the IRA maximum contribution limit for individuals who have attained age 50 before the end of the taxable year. The maximum dollar contribution limit (before application of the AGI phase-out limits) for such an individual is increased to $5,000 in 2002 and 2003. In 2004 and thereafter, the general limit applies to all individuals.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

TITLE II. EXPANDING COVERAGE

A. Increase in Benefit and Contribution Limits

(Sec. 201 of the bill and secs. 401(a)(17), 402(g), 408(p), 415 and 457 of the Code)

PRESENT LAW

In general

Present law imposes limits on contributions and benefits under qualified plans (sec. 415), the amount of compensation that may be taken into account under a plan for determining benefits (sec. 401(a)(17)), the amount of elective deferrals that an individual may make to a salary reduction plan or tax sheltered annuity (sec. 402(g)), and deferrals under an eligible deferred compensation plan of a tax-exempt organization or a State or local government (sec. 457).

Limitations on contributions and benefits

Under present law, the limits on contributions and benefits under qualified plans are based on the type of plan. Under a defined contribution plan, the qualification rules limit the annual additions to the plan with respect to each plan participant to the lesser of (1) 25 percent of compensation or (2) $35,000 (for 2001). Annual additions are the sum of employer contributions, employee contributions, and forfeitures with respect to an individual under all defined contribution plans of the same employer. The $35,000 limit is indexed for cost-of-living adjustments in $5,000 increments.

Under a defined benefit plan, the maximum annual benefit payable at retirement is generally the lesser of (1) 100 percent of average compensation, or (2) $140,000 (for 2001). The dollar limit is adjusted for cost-of-living increases in $5,000 increments.

Under present law, in general, the dollar limit on annual benefits is reduced if benefits under the plan begin before the social security retirement age (currently, age 65) and increased if benefits begin after social security retirement age.

Compensation limitation

Under present law, the annual compensation of each participant that may be taken into account for purposes of determining contributions and benefits under a plan, applying the deduction rules, and for nondiscrimination testing purposes is limited to $170,000 (for 2001). The compensation limit is indexed for cost-of-living adjustments in $10,000 increments.

Elective deferral limitations

Under present law, under certain salary reduction arrangements, an employee may elect to have the employer make payments as contributions to a plan on behalf of the employee, or to the employee directly in cash. Contributions made at the election of the employee are called elective deferrals.

The maximum annual amount of elective deferrals that an individual may make to a qualified cash or deferred arrangement (a "section 401(k) plan"), a tax-sheltered annuity ("section 403(b) annuity") or a salary reduction simplified employee pension plan ("SEP") is $10,500 (for 2001). The maximum annual amount of elective deferrals that an individual may make to a SIMPLE plan is $6,500 (for 2001). These limits are indexed for inflation in $500 increments.

Section 457 plans

The maximum annual deferral under a deferred compensation plan of a State or local government or a tax-exempt organization (a "section 457 plan") is the lesser of (1) $8,500 (for 2001) or (2) 33⅓ percent of compensation. The $8,500 dollar limit is increased for inflation in $500 increments. Under a special catch-up rule, the section 457 plan may provide that, for one or more of the participant's last 3 years before retirement, the otherwise applicable limit is increased to the lesser of (1) $15,000 or (2) the sum of the otherwise applicable limit for the year plus the amount by which the limit applicable in preceding years of participation exceeded the deferrals for that year.

REASONS FOR CHANGE

The tax benefits provided under qualified plans are a departure from the normally applicable income tax rules. The special tax benefits for qualified plans are generally justified on the ground that they serve an important social policy objective, i.e., the provision of retirement benefits to a broad group of employees. The limits on contributions and benefits, elective deferrals, and compensation that may be taken into account under a qualified plan all serve to limit the tax benefits associated with such plans. The level at which to place such limits involves a balancing of different policy objectives and a judgment as to what limits are most likely to best further policy goals.

One of the factors that may influence the decision of an employer, particularly a small employer, to adopt a plan is the extent to which the owners of the business, the decision-makers, or other highly compensated employees will benefit under the plan. The

Committee believes that increasing the dollar limits on qualified plan contributions and benefits will encourage employers to establish qualified plans for their employees.

The Committee understands that, in recent years, section 401(k) plans have become increasingly more prevalent. The Committee believes it is important to increase the amount of employee elective deferrals allowed under such plans, and other plans that allow deferrals, to better enable plan participants to save for their retirement.

EXPLANATION OF PROVISION

Limits on contributions and benefits

The provision increases the $35,000 limit on annual additions to a defined contribution plan to $40,000. This amount is indexed in $1,000 increments.[2]

The provision increases the $140,000 annual benefit limit under a defined benefit plan to $160,000. The dollar limit is reduced for benefit commencement before age 62 and increased for benefit commencement after age 65.[3] In adopting rules regarding the application of the increase in the defined benefit plan limits under the bill, it is intended that the Secretary will apply rules similar to those adopted in Notice 99–44 regarding benefit increases due to the repeal of the combined plan limit under former section 415(e). Thus, for example, a defined benefit plan could provide for benefit increases to reflect the provisions of the bill for a current or former employee who has commenced benefits under the plan prior to the effective date of the bill if the employee or former employee has an accrued benefit under the plan (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in the section 415 limits under the bill). As under the notice, the maximum amount of permitted increase is generally the amount that could have been provided had the provisions of the bill been in effect at the time of the commencement of benefit. In no case may benefits reflect increases that could not be paid prior to the effective date because of the limits in effect under present law. In addition, in no case may plan amendments providing increased benefits under the relevant provision of the bill be effective prior to the effective date of the provision.

Compensation limitation

The provision increases the limit on compensation that may be taken into account under a plan to $200,000. This amount is indexed in $5,000 increments.

Elective deferral limitations

The provision increases the dollar limit on annual elective deferrals under section 401(k) plans, section 403(b) annuities and salary reduction SEPs to $11,000 in 2002. In 2003 and thereafter, the limits are increased in $1,000 annual increments until the limits reach $15,000 in 2006, with indexing in $500 increments thereafter. The

[2] The 25 percent of compensation limitation is increased to 100 percent of compensation under another provision of the bill.

[3] Another provision of the bill modifies the defined benefit pension plan limits for multiemployer plans.

provision increases the maximum annual elective deferrals that may be made to a SIMPLE plan to $7,000 in 2002. In 2003 and thereafter, the SIMPLE plan deferral limit is increased in $1,000 annual increments until the limit reaches $10,000 in 2005. Beginning after 2005, the $10,000 dollar limit is indexed in $500 increments.

Section 457 plans

The provision increases the dollar limit on deferrals under a section 457 plan to conform to the elective deferral limitation. Thus, the limit is $11,000 in 2002, and is increased in $1,000 annual increments thereafter until the limit reaches $15,000 in 2006. The limit is indexed thereafter in $500 increments. The limit is twice the otherwise applicable dollar limit in the three years prior to retirement.[4]

EFFECTIVE DATE

The provision is effective for years beginning after December 31, 2001.

B. Plan Loans for S Corporation Shareholders, Partners, and Sole Proprietors

(Sec. 202 of the bill and sec. 4975 of the Code)

PRESENT LAW

The Internal Revenue Code prohibits certain transactions ("prohibited transactions") between a qualified plan and a disqualified person in order to prevent persons with a close relationship to the qualified plan from using that relationship to the detriment of plan participants and beneficiaries.[5] Certain types of transactions are exempted from the prohibited transaction rules, including loans from the plan to plan participants, if certain requirements are satisfied. In addition, the Secretary of Labor can grant an administrative exemption from the prohibited transaction rules if she finds the exemption is administratively feasible, in the interest of the plan and plan participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan. Pursuant to this exemption process, the Secretary of Labor grants exemptions both with respect to specific transactions and classes of transactions.

The statutory exemptions to the prohibited transaction rules do not apply to certain transactions in which the plan makes a loan to an owner-employee.[6] Loans to participants other than owner-employees are permitted if loans are available to all participants on a reasonably equivalent basis, are not made available to highly compensated employees in an amount greater than made available to other employees, are made in accordance with specific provisions in the plan, bear a reasonable rate of interest, and are adequately secured. In addition, the Code places limits on the amount of loans and repayment terms.

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[4] Another provision increases the 33–1/3 percentage of compensation limit to 100 percent.

[5] Title I of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), also contains prohibited transaction rules. The Code and ERISA provisions are substantially similar, although not identical.

[6] Certain transactions involving a plan and S corporation shareholders are permitted.

For purposes of the prohibited transaction rules, an owner-employee means (1) a sole proprietor, (2) a partner who owns more than 10 percent of either the capital interest or the profits interest in the partnership, (3) an employee or officer of a Subchapter S corporation who owns more than 5 percent of the outstanding stock of the corporation, and (4) the owner of an individual retirement arrangement ("IRA"). The term owner-employee also includes certain family members of an owner-employee and certain corporations owned by an owner-employee.

Under the Internal Revenue Code, a two-tier excise tax is imposed on disqualified persons who engage in a prohibited transaction. The first level tax is equal to 15 percent of the amount involved in the transaction. The second level tax is imposed if the prohibited transaction is not corrected within a certain period, and is equal to 100 percent of the amount involved.

REASONS FOR CHANGE

The Committee believes that the present-law prohibited transaction rules regarding loans unfairly discriminate against the owners of unincorporated businesses and S corporations. For example, under present law, the sole shareholder of a C corporation may take advantage of the statutory exemption to the prohibited transaction rules for loans, but an individual who does business as a sole proprietor may not.

EXPLANATION OF PROVISION

The provision generally eliminates the special present-law rules relating to plan loans made to an owner-employee (other than the owner of an IRA). Thus, the general statutory exemption applies to such transactions. Present law continues to apply with respect to IRAs.

EFFECTIVE DATE

The provision is effective with respect to years beginning after December 31, 2001.

C. Modification of Top-heavy Rules

(Sec. 203 of the bill and sec. 416 of the Code)

PRESENT LAW

In general

Under present law, additional qualification requirements apply to plans that primarily benefit an employer's key employees ("top-heavy plans"). These additional requirements provide (1) more rapid vesting for plan participants who are nonkey employees and (2) minimum nonintegrated employer contributions or benefits for plan participants who are non-key employees.

Definition of top-heavy plan

A defined benefit plan is a top-heavy plan if more than 60 percent of the cumulative accrued benefits under the plan are for key employees. A defined contribution plan is top heavy if the sum of the account balances of key employees is more than 60 percent of the total account balances under the plan. For each plan year, the determination of top-heavy status generally is made as of the last day of the preceding plan year ("the determination date").

For purposes of determining whether a plan is a top-heavy plan, benefits derived both from employer and employee contributions, including employee elective contributions, are taken into account. In addition, the accrued benefit of a participant in a defined benefit plan and the account balance of a participant in a defined contribution plan includes any amount distributed within the five-year period ending on the determination date.

An individual's accrued benefit or account balance is not taken into account in determining whether a plan is top-heavy if the individual has not performed services for the employer during the five-year period ending on the determination date.

In some cases, two or more plans of a single employer must be aggregated for purposes of determining whether the group of plans is top-heavy. The following plans must be aggregated: (1) plans which cover a key employee (including collectively bargained plans); and (2) any plan upon which a plan covering a key employee depends for purposes of satisfying the Code's nondiscrimination rules. The employer may be required to include terminated plans in the required aggregation group. In some circumstances, an employer may elect to aggregate plans for purposes of determining whether they are top heavy.

SIMPLE plans are not subject to the top-heavy rules.

Definition of key employee

A key employee is an employee who, during the plan year that ends on the determination date or any of the 4 preceding plan years, is (1) an officer earning over one-half of the defined benefit plan dollar limitation of section 415 ($70,000 for 2001), (2) a 5-percent owner of the employer, (3) a 1-percent owner of the employer earning over $150,000, or (4) one of the 10 employees earning more than the defined contribution plan dollar limit ($35,000 for 2001) with the largest ownership interests in the employer. A family ownership attribution rule applies to the determination of one-percent owner status, five-percent owner status, and largest ownership interest. Under this attribution rule, an individual is treated as owning stock owned by the individual's spouse, children, grandchildren, or parents.

Minimum benefit for non-key employees

A minimum benefit generally must be provided to all non-key employees in a top-heavy plan. In general, a top-heavy defined benefit plan must provide a minimum benefit equal to the lesser of (1) two percent of compensation multiplied by the employee's years of service, or (2) 20 percent of compensation. A top-heavy defined contribution plan must provide a minimum annual contribution equal to the lesser of (1) three percent of compensation, or (2) the percentage of compensation at which contributions were made for key employees (including employee elective contributions made by key employees and employer matching contributions).

For purposes of the minimum benefit rules, only benefits derived from employer contributions (other than amounts employees have elected to defer) to the plan are taken into account, and an employee's social security benefits are disregarded (i.e., the minimum benefit is nonintegrated). Employer matching contributions may be used to satisfy the minimum contribution requirement; however, in such a case the contributions are not treated as matching contributions for purposes of applying the special nondiscrimination requirements applicable to employee elective contributions and matching contributions under sections 401(k) and (m). Thus, such contributions would have to meet the general nondiscrimination test of section 401(a)(4).[7]

Top-heavy vesting

Benefits under a top-heavy plan must vest at least as rapidly as under one of the following schedules: (1) three-year cliff vesting, which provides for 100 percent vesting after three years of service; and (2) two-six year graduated vesting, which provides for 20 percent vesting after two years of service, and 20 percent more each year thereafter so that a participant is fully vested after six years of service.[8]

Qualified cash or deferred arrangements

Under a qualified cash or deferred arrangement (a "section 401(k) plan"), an employee may elect to have the employer make payments as contributions to a qualified plan on behalf of the employee, or to the employee directly in cash. Contributions made at the election of the employee are called elective deferrals. A special nondiscrimination test applies to elective deferrals under cash or deferred arrangements, which compares the elective deferrals of highly compensated employees with elective deferrals of nonhighly compensated employees. (This test is called the actual deferral percentage test or the "ADP" test). Employer matching contributions under qualified defined contribution plans are also subject to a similar nondiscrimination test. (This test is called the actual contribution percentage test or the "ACP" test.)

Under a design-based safe harbor, a cash or deferred arrangement is deemed to satisfy the ADP test if the plan satisfies one of two contribution requirements and satisfies a notice requirement. A plan satisfies the contribution requirement under the safe harbor rule for qualified cash or deferred arrangements if the employer either (1) satisfies a matching contribution requirement or (2) makes a nonelective contribution to a defined contribution plan of at least three percent of an employee's compensation on behalf of each nonhighly compensated employee who is eligible to participate in the arrangement without regard to the permitted disparity rules (sec. 401(l)). A plan satisfies the matching contribution requirement if, under the arrangement: (1) the employer makes a matching contribution on behalf of each nonhighly compensated employee that is equal to (a) 100 percent of the employee's elective deferrals up to three percent of compensation and (b) 50 percent of the employee's elective deferrals from three to five percent of compensation; and (2), the rate of match with respect to any elective contribution

[7] Treas. Reg. sec. 1.416–1 Q&A M–19.

[8] Benefits under a plan that is not top heavy must vest at least as rapidly as under one of the following schedules: (1) five-year cliff vesting; and (2) three-seven year graded vesting, which provides for 20 percent vesting after three years and 20 percent more each year thereafter so that a participant is fully vested after seven years of service.

for highly compensated employees is not greater than the rate of match for nonhighly compensated employees. Matching contributions that satisfy the design-based safe harbor for cash or deferred arrangements are deemed to satisfy the ACP test. Certain additional matching contributions are also deemed to satisfy the ACP test.

REASONS FOR CHANGE

The top-heavy rules primarily affect the plans of small employers. While the top-heavy rules were intended to provide additional minimum benefits to rank-and-file employees, the Committee is concerned that in some cases the top-heavy rules may act as a deterrent to the establishment of a plan by a small employer. The Committee believes that simplification of the top-heavy rules will help alleviate the additional administrative burdens the rules place on small employers. The Committee also believes that, in applying the top-heavy minimum benefit rules, the employer should receive credit for all contributions the employer makes, including matching contributions.

The Committee understands that some employers may have been discouraged from adopting a safe harbor section 401(k) plan due to concerns about the top-heavy rules. The Committee believes that facilitating the adoption of such plans will broaden coverage. Thus, the Committee believes it appropriate to provide that such plans are not subject to the top-heavy rules.

EXPLANATION OF PROVISION

Definition of top-heavy plan

The provision provides that a plan consisting of a cash-or-deferred arrangement that satisfies the design-based safe harbor for such plans and matching contributions that satisfy the safe harbor rule for such contributions is not a top-heavy plan. Matching or nonelective contributions provided under such a plan may be taken into account in satisfying the minimum contribution requirements applicable to top-heavy plans.[9]

In determining whether a plan is top-heavy, distributions during the year ending on the date the top-heavy determination is being made are taken into account. The present-law five-year rule would apply with respect to in-service distributions. Similarly, the provision provides that an individual's accrued benefit or account balance is not taken into account if the individual has not performed services for the employer during the one-year period ending on the date the top-heavy determination is being made.

Definition of key employee

The bill (1) provides that an employee is not considered a key employee by reason of officer status unless the employee earns more than $150,000 and (2) repeals the top-10 owner key employee category. The bill repeals the four-year lookback rule for determining key employee status and provide that an employee is a key

[9] This provision is not intended to preclude the use of nonelective contributions that are used to satisfy the safe harbor rules from being used to satisfy other qualified retirement plan nondiscrimination rules, including those involving cross-testing.

employee only if he or she is a key employee during the preceding plan year.

Thus, under the bill, an employee is considered a key employee if, during the prior year, the employee was (1) an officer with compensation in excess of $150,000, (2) a five-percent owner, or (3) a one-percent owner with compensation in excess of $150,000. The present-law limits on the number of officers treated as key employees under (1) continue to apply.

The family ownership attribution rule no longer applies in determining whether an individual is a five-percent owner of the employer for purposes of the top-heavy rules only. The family ownership attribution rule continues to apply to other provisions that cross reference the top-heavy rules, such as the definition of highly compensated employee and the definition of one-percent owner under the top-heavy rules.

Minimum benefit for nonkey employees

Under the bill, matching contributions are taken into account in determining whether the minimum benefit requirement has been satisfied.[10]

The bill provides that, in determining the minimum benefit required under a defined benefit plan, a year of service does not include any year in which no key employee or former key employee benefits under the plan (as determined under sec. 410).

EFFECTIVE DATE

The provision is effective for years beginning after December 31, 2001.

D. ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DEDUCTION LIMITS

(Sec. 204 of the bill and sec. 404 of the Code)

PRESENT LAW

Employer contributions to one or more qualified retirement plans are deductible subject to certain limits. In general, the deduction limit depends on the kind of plan.

In the case of a defined benefit pension plan or a money purchase pension plan, the employer generally may deduct the amount necessary to satisfy the minimum funding cost of the plan for the year. If a defined benefit pension plan has more than 100 participants, the maximum amount deductible is at least equal to the plan's unfunded current liabilities.

In the case of a profit-sharing or stock bonus plan, the employer generally may deduct an amount equal to 15 percent of compensation of the employees covered by the plan for the year.

If an employer sponsors both a defined benefit pension plan and a defined contribution plan that covers some of the same employees (or a money purchase pension plan and another kind of defined contribution plan), the total deduction for all plans for a plan year generally is limited to the greater of (1) 25 percent of compensation

[10] Thus, this provision overrides the provision in Treasury regulations that, if matching contributions are used to satisfy the minimum benefit requirement, then they are not treated as matching contributions for purposes of the section 401(m) nondiscrimination rules.

or (2) the contribution necessary to meet the minimum funding requirements of the defined benefit pension plan for the year (or the amount of the plan's unfunded current liabilities, in the case of a plan with more than 100 participants).

For purposes of the deduction limits, employee elective deferral contributions to a section 401(k) plan are treated as employer contributions and, thus, are subject to the generally applicable deduction limits.

Subject to certain exceptions, nondeductible contributions are subject to a 10-percent excise tax.

REASONS FOR CHANGE

Subjecting elective deferrals to the normally applicable deduction limits may cause employers to restrict the amount of elective deferrals an employee may make or to restrict employer contributions to the plan, thereby reducing participants' ultimate retirement benefits and their ability to save adequately for retirement. The Committee believes that the amount of elective deferrals otherwise allowable should not be further limited through application of the deduction rules.

EXPLANATION OF PROVISION

Under the provision, elective deferral contributions are not subject to the deduction limits, and the application of a deduction limitation to any other employer contribution to a qualified retirement plan does not take into account elective deferral contributions.

EFFECTIVE DATE

The provision is effective for years beginning after December 31, 2001.

E. Repeal of Coordination Requirements for Deferred Compensation Plans of State and Local Governments and Tax-exempt Organizations

(Sec. 205 of the bill and sec. 457 of the Code)

PRESENT LAW

Compensation deferred under an eligible deferred compensation plan of a tax-exempt or State and local government employer (a "section 457 plan") is not includible in gross income until paid or made available. In general, the maximum permitted annual deferral under such a plan is the lesser of (1) \$8,500 (in 2001) or (2) $33\frac{1}{3}$ percent of compensation. The \$8,500 limit is increased for inflation in \$500 increments. Under a special catch-up rule, a section 457 plan may provide that, for one or more of the participant's last 3 years before retirement, the otherwise applicable limit is increased to the lesser of (1) \$15,000 or (2) the sum of the otherwise applicable limit for the year plus the amount by which the limit applicable in preceding years of participation exceeded the deferrals for that year.

The \$8,500 limit (as modified under the catch-up rule), applies to all deferrals under all section 457 plans in which the individual participates. In addition, in applying the \$8,500 limit, contributions under a tax-sheltered annuity ("section 403(b) annuity"), elective deferrals under a qualified cash or deferred arrangement ("section 401(k) plan"), salary reduction contributions under a simplified employee pension plan ("SEP"), and contributions under a SIMPLE plan are taken into account. Further, the amount deferred under a section 457 plan is taken into account in applying a special catch-up rule for section 403(b) annuities.

REASONS FOR CHANGE

The Committee believes that individuals participating in a section 457 plan should also be able to fully participate in a section 403(b) annuity or section 401(k) plan of the employer. Eliminating the coordination rule may also encourage the establishment of section 403(b) or 401(k) plans by tax-exempt and governmental employers (as permitted under present law).

EXPLANATION OF PROVISION

The provision repeals the rules coordinating the section 457 dollar limit with contributions under other types of plans.[11]

EFFECTIVE DATE

The provision is effective for years beginning after December 31, 2001.

F. ELIMINATE IRS USER FEES FOR CERTAIN DETERMINATION LETTER REQUESTS REGARDING EMPLOYER PLANS

(Sec. 206 of the bill)

PRESENT LAW

An employer that maintains a retirement plan for the benefit of its employees may request from the IRS a determination as to whether the form of the plan satisfies the requirements applicable to tax-qualified plans (sec. 401(a)). In order to obtain from the IRS a determination letter on the qualified status of the plan, the employer must pay a user fee. The Secretary determines the user fee applicable for various types of requests, subject to statutory minimum requirements for average fees based on the category of the request. The user fee may range from $125 to $1,250, depending upon the scope of the request and the type and format of the plan.[12]

Present law provides that plans that do not meet the qualification requirements will be treated as meeting such requirements if appropriate retroactive plan amendments are made during the remedial amendment period. In general, the remedial amendment period ends on the due date for the employer's tax return (including extensions) for the taxable year in which the event giving rise to the disqualifying provision occurred (e.g., a plan amendment or a change in the law). The Secretary may provide for general exten-

[11] The limits on deferrals under a section 457 plan are modified under other provisions of the bill.

[12] Authorization for the user fees was originally enacted in section 10511 of the Revenue Act of 1987 (Pub. L. No. 100–203, December 22, 1987). The authorization was extended through September 30, 2003, by Public Law Number 104–117 (An Act to provide that members of the Armed Forces preforming services for the peacekeeping efforts in Bosnia and Herzegovina, Croatia, and Macedonia shall be entitled to tax benefits in the same manner as if such services were performed in a combat zone, and for other purposes (March 20, 1996)).

sions of the remedial amendment period or for extensions in certain cases. For example, the remedial amendment period with respect to amendments relating to the qualification requirements affected by the General Agreements on Tariffs and Trade, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, and the Internal Revenue Service Restructuring and Reform Act of 1998 generally ends the last day of the first plan year beginning on or after January 1, 2001.[13]

REASONS FOR CHANGE

One of the factors affecting the decision of a small employer to adopt a plan is the level of administrative costs associated with the plan. The Committee believes that reducing administrative costs, such as IRS user fees, will help further the establishment of qualified plans by small employers.

EXPLANATION OF PROVISION

A small employer (100 or fewer employees) is not required to pay a user fee for a determination letter request with respect to the qualified status of a retirement plan that the employer maintains if the request is made before the later of (1) the last day of the fifth plan year of the plan or (2) the end of any applicable remedial amendment period with respect to the plan that begins before the end of the fifth plan year of the plan. In addition, determination letter requests for which user fees are not required under the provision are not taken into account in determining average user fees. The provision would apply only to requests by employers for determination letters concerning the qualified retirement plans they maintain. Therefore, a sponsor of a prototype plan is required to pay a user fee for a request for a notification letter, opinion letter, or similar ruling. A small employer that adopts a prototype plan, however, is not required to pay a user fee for a determination letter request with respect to the employer's plan.

EFFECTIVE DATE

The provision is effective for determination letter requests made after December 31, 2001.

G. DEDUCTION LIMITS

(Sec. 207 of the bill and sec. 404 of the Code)

PRESENT LAW

Employer contributions to one or more qualified retirement plans are deductible subject to certain limits. In general, the deduction limit depends on the kind of plan. Subject to certain exceptions, nondeductible contributions are subject to a 10-percent excise tax.

In the case of a defined benefit pension plan or a money purchase pension plan, the employer generally may deduct the amount necessary to satisfy the minimum funding cost of the plan for the year. If a defined benefit pension plan has more than 100 partici-

[13] Rev. Proc. 2000–27, 2000–26 I.R.B. 1272.

pants, the maximum amount deductible is at least equal to the plan's unfunded current liabilities.

In some cases, the amount of deductible contributions is limited by compensation. In the case of a profit-sharing or stock bonus plan, the employer generally may deduct an amount equal to 15 percent of compensation of the employees covered by the plan for the year.

If an employer sponsors both a defined benefit pension plan and a defined contribution plan that covers some of the same employees (or a money purchase pension plan and another kind of defined contribution plan), the total deduction for all plans for a plan year generally is limited to the greater of (1) 25 percent of compensation or (2) the contribution necessary to meet the minimum funding requirements of the defined benefit pension plan for the year (or the amount of the plan's unfunded current liabilities, in the case of a plan with more than 100 participants).

In the case of an employee stock ownership plan ("ESOP"), principal payments on a loan used to acquire qualifying employer securities are deductible up to 25 percent of compensation.

For purposes of the deduction limits, employee elective deferral contributions to a qualified cash or deferred arrangement ("section 401(k) plan") are treated as employer contributions and, thus, are subject to the generally applicable deduction limits.[14]

For purposes of the deduction limits, compensation means the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the plan, and the beneficiaries under a profit-sharing or stock bonus plan are the employees who benefit under the plan with respect to the employer's contribution.[15] An employee who is eligible to make elective deferrals under a section 401(k) plan is treated as benefitting under the arrangement even if the employee elects not to defer.[16]

For purposes of the deduction rules, compensation generally includes only taxable compensation, and thus does not include salary reduction amounts, such as elective deferrals under a section 401(k) plan or a tax-sheltered annuity ("section 403(b) annuity"), elective contributions under a deferred compensation plan of a tax-exempt organization or a State or local government ("section 457 plan"), and salary reduction contributions under a section 125 cafeteria plan. For purposes of the contribution limits under section 415, compensation does include such salary reduction amounts.

REASONS FOR CHANGE

The Committee believes that compensation unreduced by employee elective contributions is a more appropriate measure of compensation for plan purposes, including deduction limits, than the present-law rule. Applying the same definition for deduction purposes as is generally used for other qualified plan purposes will also simplify application of the qualified plan rules. The Committee also believes that the 15 percent of compensation limit may restrict the amount of employer contributions to the plan, thereby reducing participants' ultimate retirement benefits and their ability to adequately save for retirement.

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[14] Another provision provides that elective deferrals are not subject to the deduction limits.
[15] Rev. Rul. 65–295, 1965–2 C.B. 148.
[16] Treas. Reg. sec. 1.410(b)–3.

EXPLANATION OF PROVISION

Under the provision, the definition of compensation for purposes of the deduction rules includes salary reduction amounts treated as compensation under section 415. In addition, the annual limitation on the amount of deductible contributions to a profit-sharing or stock bonus plan is increased from 15 percent to 20 percent of compensation of the employees covered by the plan for the year.

EFFECTIVE DATE

The provision is effective for years beginning after December 31, 2001.

H. OPTION TO TREAT ELECTIVE DEFERRALS AS AFTER-TAX CONTRIBUTIONS

(Sec. 208 of the bill and new sec. 402A of the Code)

PRESENT LAW

A qualified cash or deferred arrangement (“section 401(k) plan”) or a tax-sheltered annuity (“section 403(b) annuity”) may permit a participant to elect to have the employer make payments as contributions to the plan or to the participant directly in cash. Contributions made to the plan at the election of a participant are elective deferrals. Elective deferrals must be nonforfeitable and are subject to an annual dollar limitation (sec. 402(g)) and distribution restrictions. In addition, elective deferrals under a section 401(k) plan are subject to special nondiscrimination rules. Elective deferrals (and earnings attributable thereto) are not includible in a participant’s gross income until distributed from the plan.

Elective deferrals for a taxable year that exceed the annual dollar limitation (“excess deferrals”) are includible in gross income for the taxable year. If an employee makes elective deferrals under a plan (or plans) of a single employer that exceed the annual dollar limitation (“excess deferrals”), then the plan may provide for the distribution of the excess deferrals, with earnings thereon. If the excess deferrals are made to more than one plan of unrelated employers, then the plan may permit the individual to allocate excess deferrals among the various plans, no later than the March 1 (April 15 under the applicable regulations) following the end of the taxable year. If excess deferrals are distributed not later than April 15 following the end of the taxable year, along with earnings attributable to the excess deferrals, then the excess deferrals are not again includible in income when distributed. The earnings are includible in income in the year distributed. If excess deferrals (and income thereon) are not distributed by the applicable April 15, then the excess deferrals (and income thereon) are includible in income when received by the participant. Thus, excess deferrals that are not distributed by the applicable April 15th are taxable both in the taxable year when the deferral was made and in the year the participant receives a distribution of the excess deferral.

Individuals with adjusted gross income below certain levels generally may make nondeductible contributions to a Roth IRA and may convert a deductible or nondeductible IRA into a Roth IRA. Amounts held in a Roth IRA that are withdrawn as a qualified distribution are not includible in income, nor subject to the additional 10-percent tax on early withdrawals. A qualified distribution is a distribution that (1) is made after the 5-taxable-year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA, and (2) is made after attainment of age 59½, is made on account of death or disability, or is a qualified special purpose distribution (i.e., for first-time homebuyer expenses of up to $10,000). A distribution from a Roth IRA that is not a qualified distribution is includible in income to the extent attributable to earnings, and is subject to the 10-percent tax on early withdrawals (unless an exception applies).[17]

REASONS FOR CHANGE

The recently-enacted Roth IRA provisions have provided individuals with another form of tax-favored retirement savings. For a variety of reasons, some individuals may prefer to save through a Roth IRA rather than a traditional deductible IRA. The Committee believes that similar savings choices should be available to participants in section 401(k) plans and tax-sheltered annuities.

EXPLANATION OF PROVISION

A section 401(k) plan or a section 403(b) annuity is permitted to include a "qualified plus contribution program" that permits a participant to elect to have all or a portion of the participant's elective deferrals under the plan treated as designated plus contributions. Designated plus contributions are elective deferrals that the participant designates (at such time and in such manner as the Secretary may prescribe)[18] as not excludable from the participant's gross income.

The annual dollar limitation on a participant's designated plus contributions is the section 402(g) annual limitation on elective deferrals, reduced by the participant's elective deferrals that the participant does not designate as designated plus contributions. Designated plus contributions are treated as any other elective deferral for purposes of nonforfeitability requirements and distribution restrictions.[19] Under a section 401(k) plan, designated plus contributions also are treated as any other elective deferral for purposes of the special nondiscrimination requirements.[20]

The plan is required to establish a separate account, and maintain separate recordkeeping, for a participant's designated plus contributions (and earnings allocable thereto). A qualified distribution from a participant's designated plus contributions account would not be includible in the participant's gross income. A qualified distribution is a distribution that is made after the end of a

[17] Early distributions of converted amounts may also accelerate income inclusion of converted amounts that are taxable under the 4-year rule applicable to 1998 conversions.

[18] It is intended that the Secretary will generally not permit retroactive designations of elective deferrals as designated plus contributions.

[19] Similarly, designated plus contributions to a section 403(b) annuity are treated the same as other salary reduction contributions to the annuity (except that designated plus contributions are includible in income).

[20] It is intended that the Secretary provide ordering rules regarding the return of excess contributions under the special nondiscrimination rules (pursuant to sec. 401(k)(8)) in the event a participant makes both regular elective deferrals and designated plus contributions. It is intended that such rules will generally permit a plan to allow participants to designate which contributions are returned first or to permit the plan to specify which contributions are returned first. ?It is also intended that the Secretary will provide ordering rules to determine the extent to which a distribution consists of excess Roth contributions.

specified nonexclusion period and that is (1) made on or after the date on which the participant attains age 59–1/2, (2) made to a beneficiary (or to the estate of the participant) on or after the death of the participant, or (3) attributable to the participant's being disabled.[21] The nonexclusion period is the 5–year-taxable period beginning with the earlier of (1) the first taxable year for which the participant made a designated plus contribution to any designated plus contribution account established for the participant under the plan, or (2) if the participant has made a rollover contribution to the designated plus contribution account that is the source of the distribution from a designated plus contribution account established for the participant under another plan, the first taxable year for which the participant made a designated plus contribution to the previously established account.

A distribution from a designated plus contributions account that is a corrective distribution of an elective deferral (and income allocable thereto) that exceeds the section 402(g) annual limit on elective deferrals or a corrective distribution of an excess contribution under the special nondiscrimination rules (pursuant to sec. 401(k)(8) and income allocable thereto) would not be a qualified distribution. In addition, the treatment of excess designated plus contributions is similar to the treatment of excess deferrals attributable to non-designated plus contributions. If excess designated plus contributions (including earnings thereon) are distributed no later than the April 15th following the taxable year, then the designated plus contributions would not be includible in gross income as a result of the distribution, because such contributions are includible in gross income when made. Earnings on such excess designated plus contributions are treated the same as earnings on excess deferrals distributed no later than April 15th, i.e., they are includible in income when distributed. If excess designated plus contributions are not distributed no later than the applicable April 15th, then such contributions (and earnings thereon) are taxable when distributed. Thus, as is the case with excess elective deferrals that are not distributed by the applicable April 15th, the contributions are includible in income in the year when made and again when distributed from the plan. Earnings on such contributions are taxable when received.

A participant is permitted to roll over a distribution from a designated plus contributions account only to another designated plus contributions account or a Roth IRA of the participant.

The Secretary of the Treasury is directed to require the plan administrator of each section 401(k) plan or section 403(b) annuity that permits participants to make designated plus contributions to make such returns and reports regarding designated plus contributions to the Secretary, plan participants and beneficiaries, and other persons that the Secretary may designate.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

[21] A qualified special purpose distribution, as defined under the rules relating to Roth IRAs, does not qualify as a tax-free distribution from a designated plus contributions account.

I. Treatment of Self-employment Income of Members of Certain Religious Faiths

(Sec. 209 of the bill and secs. 401(c)(2) and 408(p)(6)(A) of the Code)

PRESENT LAW

In general, contributions to qualified plans and IRAs are based on compensation. For a self-employed individual, compensation generally means net earnings subject to self-employment taxes ("SECA taxes"). Members of certain religious faiths may elect to be exempt from SECA taxes on religious grounds. Because the net earnings of such individuals are not subject to SECA taxes, these individuals are considered to have no compensation on which to base contributions to a retirement plan. Under an exception to this rule, net earnings of such individuals are treated as compensation for purposes of making contributions to an IRA.

REASONS FOR CHANGE

The Committee believes that present law inappropriately restricts the ability of members of certain religious faiths to save for retirement. The Committee believes these individuals should be able to contribute to other retirement plans in addition to IRAs.

EXPLANATION OF PROVISION

The provision amends the definition of compensation for purposes of all qualified plans and IRAs (including SIMPLE arrangements) to include an individual's net earnings that would be subject to SECA taxes but for the fact that the individual is covered by a religious exemption.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

J. Certain Nonresident Aliens Excluded in Applying Minimum Coverage Requirements

(Sec. 210 of the bill and sec. 410(b)(3) of the Code)

PRESENT LAW

Under the minimum coverage requirements (sec. 410(b)), a qualified plan must benefit a minimum number of the employer's nonhighly compensated employees. In applying the minimum coverage requirements, employees who are nonresident aliens are disregarded if they have no earned income from sources within the United States ("U.S. source income"). Generally, compensation for services performed in the United States is treated as U.S. source income. Under a special rule, compensation is not treated as U.S. source income if the compensation is paid for labor or services performed by a nonresident alien in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States. However, this special rule does not apply for qualified plan purposes, including the minimum coverage requirements. As a result, such nonresident aliens must be taken into account in determining whether the plan satisfies the minimum coverage requirements.

REASONS FOR CHANGE

The Committee believes that nonresident aliens who are in the United States temporarily as crew members of foreign vessels engaged in transportation between the United States and a foreign country or a possession of the United States and who otherwise have no U.S. source income for Federal tax purposes should be disregarded in applying the minimum coverage requirements.

EXPLANATION OF PROVISION

For purposes of the application of the minimum coverage requirements (sec. 410(b)), compensation is not treated as U.S. source income if the compensation is paid for labor or services performed by a nonresident alien in connection with the individual's temporary presence in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or a possession of the United States. As a result, such nonresident aliens are excluded from consideration in the application of the minimum coverage requirements.

EFFECTIVE DATE

The provision is effective with respect to plan years beginning after December 31, 2001.

TITLE III. ENHANCING FAIRNESS FOR WOMEN

A. ADDITIONAL SALARY REDUCTION CATCH-UP CONTRIBUTIONS

(Sec. 301 of the bill and sec. 414 of the Code)

PRESENT LAW

Elective deferral limitations

Under present law, under certain salary reduction arrangements, an employee may elect to have the employer make payments as contributions to a plan on behalf of the employee, or to the employee directly in cash. Contributions made at the election of the employee are called elective deferrals.

The maximum annual amount of elective deferrals that an individual may make to a qualified cash or deferred arrangement (a "401(k) plan"), a tax-sheltered annuity ("section 403(b) annuity") or a salary reduction simplified employee pension plan ("SEP") is $10,500 (for 2001). The maximum annual amount of elective deferrals that an individual may make to a SIMPLE plan is $6,500 (for 2001). These limits are indexed for inflation in $500 increments.

Section 457 plans

The maximum annual deferral under a deferred compensation plan of a State or local government or a tax-exempt organization (a "section 457 plan") is the lesser of (1) $8,500 (for 2001) or (2) 33⅓ percent of compensation. The $8,500 dollar limit is increased for inflation in $500 increments. Under a special catch-up rule, the section 457 plan may provide that, for one or more of the participant's last 3 years before retirement, the otherwise applicable limit is increased to the lesser of (1) $15,000 or (2) the sum of the otherwise applicable limit for the year plus the amount by which the limit applicable in preceding years of participation exceeded the deferrals for that year.

REASONS FOR CHANGE

Although the Committee believes that individuals should be saving for retirement throughout their working lives, as a practical matter, many individuals simply do not focus on the amount of retirement savings they need until they near retirement. In addition, many individuals may have difficulty saving more in earlier years, e.g., because an employee leaves the workplace to care for a family. Some individuals may have a greater ability to save as they near retirement.

The Committee believes that the pension laws should assist individuals who are nearing retirement to save more for their retirement.

EXPLANATION OF PROVISION

The provision provides that the otherwise applicable dollar limit on elective deferrals under a section 401(k) plan, section 403(b) annuity, SEP, or SIMPLE, or deferrals under a section 457 plan are increased for individuals who have attained age 50 by the end of the year.[22] Additional contributions are permitted by an individual who has attained age 50 before the end of the plan year and with respect to whom no other elective deferrals may otherwise be made to the plan for the year because of the application of any limitation of the Code (e.g., the annual limit on elective deferrals) or of the plan. Under the provision, the additional amount of elective contributions that are permitted to be made by an eligible individual participating in such a plan is the lesser of (1) $5,000, or (2) the participant's compensation for the year reduced by any other elective deferrals of the participant for the year. This $5,000 amount is indexed for inflation in $500 increments in 2007 and thereafter.[23]

Catch-up contributions made under the provision are not subject to any other contribution limits and would not be taken into account in applying other contribution limits. Such contributions are subject to applicable nondiscrimination rules. Although catch-up contributions are subject to applicable nondiscrimination rules, a plan does not fail to meet the applicable nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features if the plan allows all eligible individuals participating in the plan to make the same election with respect to catch-up contributions. For purposes of this rule, all plans of related employers are treated as a single plan.

An employer is permitted to make matching contributions with respect to catch-up contributions. Any such matching contributions are subject to the normally applicable rules.

[22] Another provision increases the dollar limit on elective deferrals under such arrangements.

[23] In the case of a section 457 plans, this catch-up rule does not apply during the participant's last three years before retirement (in those years, the regularly applicable dollar limit is doubled).

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

B. EQUITABLE TREATMENT FOR CONTRIBUTIONS OF EMPLOYEES TO DEFINED CONTRIBUTION PLANS

(Sec. 302 of the bill and secs. 403(b), 415, and 457 of the Code)

PRESENT LAW

Present law imposes limits on the contributions that may be made to tax-favored retirement plans.

Defined contribution plans

In the case of a tax-qualified defined contribution plan, the limit on annual additions that can be made to the plan on behalf of an employee is the lesser of $35,000 (for 2001) or 25 percent of the employee's compensation (sec. 415(c)). Annual additions include employer contributions, including contributions made at the election of the employee (i.e., employee elective deferrals), after-tax employee contributions, and any forfeitures allocated to the employee. For this purpose, compensation means taxable compensation of the employee, plus elective deferrals, and similar salary reduction contributions. A separate limit applies to benefits under a defined benefit plan.

For years before January 1, 2000, an overall limit applied if an employee was a participant in both a defined contribution plan and a defined benefit plan of the same employer.

Tax-sheltered annuities

In the case of a tax-sheltered annuity (a "section 403(b) annuity"), the annual contribution generally cannot exceed the lesser of the exclusion allowance or the section 415(c) defined contribution limit. The exclusion allowance for a year is equal to 20 percent of the employee's includible compensation, multiplied by the employee's years of service, minus excludable contributions for prior years under qualified plans, tax-sheltered annuities or section 457 plans of the employer.

In addition to this general rule, employees of nonprofit educational institutions, hospitals, home health service agencies, health and welfare service agencies, and churches may elect application of one of several special rules that increase the amount of the otherwise permitted contributions. The election of a special rule is irrevocable; an employee may not elect to have more than one special rule apply.

Under one special rule, in the year the employee separates from service, the employee may elect to contribute up to the exclusion allowance, without regard to the 25 percent of compensation limit under section 415. Under this rule, the exclusion allowance is determined by taking into account no more than 10 years of service.

Under a second special rule, the employee may contribute up to the lesser of: (1) the exclusion allowance; (2) 25 percent of the participant's includible compensation; or (3) $15,000.

Under a third special rule, the employee may elect to contribute up to the section 415(c) limit, without regard to the exclusion allowance. If this option is elected, then contributions to other plans of the employer are also taken into account in applying the limit.

For purposes of determining the contribution limits applicable to section 403(b) annuities, includible compensation means the amount of compensation received from the employer for the most recent period which may be counted as a year of service under the exclusion allowance. In addition, includible compensation includes elective deferrals and similar salary reduction amounts.

Treasury regulations include provisions regarding application of the exclusion allowance in cases where the employee participates in a section 403(b) annuity and a defined benefit plan. The Taxpayer Relief Act of 1997 directed the Secretary of the Treasury to revise these regulations, effective for years beginning after December 31, 1999, to reflect the repeal of the overall limit on contributions and benefits.

Section 457 plans

Compensation deferred under an eligible deferred compensation plan of a tax-exempt or State and local governmental employer (a "section 457 plan") is not includible in gross income until paid or made available. In general, the maximum permitted annual deferral under such a plan is the lesser of (1) $8,500 (in 2001) or (2) 33⅓ percent of compensation. The $8,500 limit is increased for inflation in $500 increments.

REASONS FOR CHANGE

The present-law rules that limit contributions to defined contribution plans by a percentage of compensation reduce the amount that lower- and middle-income workers can save for retirement. The present-law limits may not allow such workers to accumulate adequate retirement benefits, particularly if a defined contribution plan is the only type of retirement plan maintained by the employer.

Conforming the contribution limits for tax-sheltered annuities to the limits applicable to retirement plans will simplify the administration of the pension laws, and provide more equitable treatment for participants in similar types of plans.

EXPLANATION OF PROVISION

Increase in defined contribution plan limit

The provision increases the 25 percent of compensation limitation on annual additions under a defined contribution plan [24] to 100 percent.[25]

Conforming limits on tax-sheltered annuities

The provision repeals the exclusion allowance applicable to contributions to tax-sheltered annuities. Thus, such annuities are subject to the limits applicable to tax-qualified plans.

The provision also directs the Secretary of the Treasury to revise the regulations relating to the exclusion allowance under section

[24] Another provision increases the defined contribution plan dollar limit.

[25] The provision preserves the present-law deduction rules for money purchase pension plans. Thus, for purposes of such rules, the limitation on the amount the employer generally may deduct is an amount equal to 25 percent of compensation of the employees covered by the plan for the year.

403(b)(2) to render void the requirement that contributions to a defined benefit plan be treated as previously excluded amounts for purposes of the exclusion allowance. For taxable years beginning after December 31, 1999, the regulatory provisions regarding the exclusion allowance are to be applied as if the requirement that contributions to a defined benefit plan be treated as previously excluded amounts for purposes of the exclusion allowance were void.

Section 457 plans

The provision increases the 33⅓ percent of compensation limitation on deferrals under a section 457 plan to 100 percent of compensation.

EFFECTIVE DATE

The provision generally is effective for years beginning after December 31, 2001. The provision regarding the regulations under section 403(b)(2) is effective on the date of enactment.

C. Faster Vesting of Employer Matching Contributions

(Sec. 303 of the bill and sec. 411 of the Code)

PRESENT LAW

Under present law, a plan is not a qualified plan unless a participant's employer-provided benefit vests at least as rapidly as under one of two alternative minimum vesting schedules. A plan satisfies the first schedule if a participant acquires a nonforfeitable right to 100 percent of the participant's accrued benefit derived from employer contributions upon the completion of 5 years of service. A plan satisfies the second schedule if a participant has a nonforfeitable right to at least 20 percent of the participant's accrued benefit derived from employer contributions after 3 years of service, 40 percent after 4 years of service, 60 percent after 5 years of service, 80 percent after 6 years of service, and 100 percent after 7 years of service.[26]

REASONS FOR CHANGE

The Committee understands that many employees, particularly lower- and middle-income employees, do not take full advantage of the retirement savings opportunities provided by their employer's section 401(k) plan. The Committee believes that providing faster vesting for matching contributions will make section 401(k) plans more attractive for employees, particularly lower- and middle-income employees, and will encourage employees to save more for their own retirement. In addition, faster vesting for matching contributions will enable short-service employees to accumulate greater retirement savings.

EXPLANATION OF PROVISION

The provision applies faster vesting schedules to employer matching contributions. Under the provision, employer matching contributions are required to vest at least as rapidly as under one of the following two alternative minimum vesting schedules. A plan

[26] The minimum vesting requirements are also contained in Title I of ERISA.

satisfies the first schedule if a participant acquires a nonforfeitable right to 100 percent of employer matching contributions upon the completion of three years of service. A plan satisfies the second schedule if a participant has a nonforfeitable right to 20 percent of employer matching contributions for each year of service beginning with the participant's second year of service and ending with 100 percent after six years of service.

EFFECTIVE DATE

The provision is effective for contributions for plan years beginning after December 31, 2001, with a delayed effective date for plans maintained pursuant to a collective bargaining agreement. The provision does not apply to any employee until the employee has an hour of service after the effective date. In applying the new vesting schedule, service before the effective date is taken into account.

D. Modifications to Minimum Distribution Rules

(Sec. 304 of the bill and sec. 401(a)(9) of the Code)

PRESENT LAW

In general

Minimum distribution rules apply to all types of tax-favored retirement vehicles, including qualified plans, individual retirement arrangements ("IRAs"), tax-sheltered annuities ("section 403(b) annuities"), and eligible deferred compensation plans of tax-exempt and State and local government employers ("section 457 plans"). In general, under these rules, distribution of minimum benefits must begin no later than the required beginning date. Minimum distribution rules also apply to benefits payable with respect to a plan participant who has died. Failure to comply with the minimum distribution rules results in an excise tax imposed on the individual plan participant equal to 50 percent of the required minimum distribution not distributed for the year. The excise tax may be waived if the individual establishes to the satisfaction of the Commissioner that the shortfall in the amount distributed was due to reasonable error and reasonable steps are being taken to remedy the shortfall. Under certain circumstances following the death of a participant, the excise tax is automatically waived under proposed Treasury regulations.

Distributions prior to the death of the individual

In the case of distributions prior to the death of the plan participant, the minimum distribution rules are satisfied if either (1) the participant's entire interest in the plan is distributed by the required beginning date, or (2) the participant's interest in the plan is to be distributed (in accordance with regulations), beginning not later than the required beginning date, over a permissible period. The permissible periods are (1) the life of the participant, (2) the lives of the participant and a designated beneficiary, (3) the life expectancy of the participant, or (4) the joint life and last survivor expectancy of the participant and a designated beneficiary. In calculating minimum required distributions, life expectancies of the participant and the participant's spouse may be recomputed annually.

In the case of qualified plans, tax-sheltered annuities, and section 457 plans, the required beginning date is the April 1 of the calendar year following the later of (1) the calendar year in which the employee attains age 70½ or (2) the calendar year in which the employee retires. However, in the case of a 5–percent owner of the employer, distributions are required to begin no later than the April 1 of the calendar year following the year in which the 5–percent owner attains age 70½. If commencement of benefits is delayed beyond age 70½ from a defined benefit plan, then the accrued benefit of the employee must be actuarially increased to take into account the period after age 70½ in which the employee was not receiving benefits under the plan.[27] In the case of distributions from an IRA other than a Roth IRA, the required beginning date is the April 1 of the calendar year following the calendar year in which the IRA owner attains age 70½. The pre-death minimum distribution rules do not apply to Roth IRAs.

In general, under the proposed Treasury regulations, in order to satisfy the minimum distribution rules, annuity payments under a defined benefit plan must be paid in periodic payments made at intervals not longer than one year over a permissible period, and must be nonincreasing, or increase only as a result of the following: (1) cost-of-living adjustments; (2) cash refunds of employee contributions; (3) benefit increases under the plan; or (4) an adjustment due to death of the employee's beneficiary. In the case of a defined contribution plan, the minimum required distribution is determined by dividing the employee's benefit by an amount from the uniform table provided in the proposed regulations.

Distributions after the death of the plan participant

The minimum distribution rules also apply to distributions to beneficiaries of deceased participants. In general, if the participant dies after minimum distributions have begun, the remaining interest must be distributed at least as rapidly as under the minimum distribution method being used as of the date of death. If the participant dies before minimum distributions have begun, then the entire remaining interest must generally be distributed within 5 years of the participant's death. The 5–year rule does not apply if distributions begin within 1 year of the participant's death and are payable over the life of a designated beneficiary or over the life expectancy of a designated beneficiary. A surviving spouse beneficiary is not required to begin distribution until the date the deceased participant would have attained age 70½.

REASONS FOR CHANGE

For many years, the minimum distribution rules have been among the most complex of the rules relating to tax-favored arrangements. On January 17, 2001, the Secretary of the Treasury issued revised proposed regulations relating to the minimum distribution rules. The Committee believes that the implementation of these revised proposed regulations, along with additional statutory

[27] State and local government plans and church plans are not required to actuarially increase benefits that begin after age 70½.

modifications of the minimum distribution rules, will result in significant simplification for individuals and plan administrators.

The sanction for failure to comply with the minimum distribution rules is severe. The Committee believes this sanction is inappropriate.

EXPLANATION OF PROVISION

Modification of post-death distribution rules

The provision applies the present-law rules applicable if the participant dies before distribution of minimum benefits has begun to all post-death distributions. Thus, in general, if the employee dies before his or her entire interest has been distributed, distribution of the remaining interest is required to be made within five years of the date of death, or begin within one year of the date of death and paid over the life or life expectancy of a designated beneficiary. In the case of a surviving spouse, distributions are not required to begin until April 1 of the calendar year following the calendar year in which the surviving spouse attains age 70½. The provision includes a transition rule with respect to the provision providing that the required beginning date in the case of a surviving spouse is no earlier than the April 1 of the calendar year following the calendar year in which the surviving spouse attains age 70½. In the case of an individual who died before the date of enactment and prior to his or her required beginning date and whose beneficiary is the surviving spouse, minimum distributions to the surviving spouse are not required to begin earlier than the date distributions would have been required to begin under present law.

Reduction in excise tax

The provision reduces the excise tax on failures to satisfy the minimum distribution rules to 10 percent of the amount that was required to be distributed but was not distributed.

Treasury regulations

The Treasury is directed to revise the life expectancy tables under the applicable regulations to reflect current life expectancy.

EFFECTIVE DATE

In general, the provision is effective for years beginning after December 31, 2001.

E. Clarification of Tax Treatment of Division of Section 457 Plan Benefits Upon Divorce

(Sec. 305 of the bill and secs. 414(p) and 457 of the Code)

PRESENT LAW

Under present law, benefits provided under a qualified retirement plan for a participant may not be assigned or alienated to creditors of the participant, except in very limited circumstances. One exception to the prohibition on assignment or alienation rule is a qualified domestic relations order ("QDRO"). A QDRO is a domestic relations order that creates or recognizes a right of an alternate payee to any plan benefit payable with respect to a participant, and that meets certain procedural requirements.

Under present law, a distribution from a governmental plan or a church plan is treated as made pursuant to a QDRO if it is made pursuant to a domestic relations order that creates or recognizes a right of an alternate payee to any plan benefit payable with respect to a participant. Such distributions are not required to meet the procedural requirements that apply with respect to distributions from qualified plans.

Under present law, amounts distributed from a qualified plan generally are taxable to the participant in the year of distribution. However, if amounts are distributed to the spouse (or former spouse) of the participant by reason of a QDRO, the benefits are taxable to the spouse (or former spouse). Amounts distributed pursuant to a QDRO to an alternate payee other than the spouse (or former spouse) are taxable to the plan participant.

Section 457 of the Internal Revenue Code provides rules for deferral of compensation by an individual participating in an eligible deferred compensation plan ("section 457 plan") of a tax-exempt or State and local government employer. The QDRO rules do not apply to section 457 plans.

REASONS FOR CHANGE

The Committee believes that the rules regarding qualified domestic relations orders should apply to all types of employer-sponsored retirement plans.

EXPLANATION OF PROVISION

The provision applies the taxation rules for qualified plan distributions pursuant to a QDRO to distributions made pursuant to a domestic relations order from a section 457 plan. In addition, a section 457 plan does not violate the restrictions on distributions from such plans due to payments to an alternate payee under a QDRO. The special rule applicable to governmental plans and church plans applies for purposes of determining whether a distribution is pursuant to a QDRO.

EFFECTIVE DATE

The provision is effective for transfers, distributions, and payments made after December 31, 2001.

F. Provisions Relating to Hardship Withdrawals

(Sec. 306 of the bill and sec. 401(k) and 402 of the Code)

PRESENT LAW

Elective deferrals under a qualified cash or deferred arrangement (a "section 401(k) plan") may not be distributable prior to the occurrence of one or more specified events. One event upon which distribution is permitted is the financial hardship of the employee. Applicable Treasury regulations [28] provide that a distribution is made on account of hardship only if the distribution is made on ac-

[28] Treas. Reg. sec. 1.401(k)–1.

count of an immediate and heavy financial need of the employee and is necessary to satisfy the heavy need.

The Treasury regulations provide a safe harbor under which a distribution may be deemed necessary to satisfy an immediate and heavy financial need. One requirement of this safe harbor is that the employee be prohibited from making elective contributions and employee contributions to the plan and all other plans maintained by the employer for at least 12 months after receipt of the hardship distribution.

Under present law, hardship withdrawals of elective deferrals from a qualified cash or deferred arrangement (or 403(b) annuity) are not eligible rollover distributions. Other types of hardship distributions, e.g., employer matching contributions distributed on account of hardship, are eligible rollover distributions. Different withholding rules apply to distributions that are eligible rollover distributions and to distributions that are not eligible rollover distributions. Eligible rollover distributions that are not directly rolled over are subject to withholding at a flat rate of 20 percent. Distributions that are not eligible rollover distributions are subject to elective withholding. Periodic distributions are subject to withholding as if the distribution were wages; nonperiodic distributions are subject to withholding at a rate of 10 percent. In either case, the individual may elect not to have withholding apply.

REASONS FOR CHANGE

Although the Committee believes that it is appropriate to restrict the circumstances in which an in-service distribution from a 401(k) plan is permitted and to encourage participants to take such distributions only when necessary to satisfy an immediate and heavy financial need, the Committee is concerned about the impact that a 12-month suspension of contributions may have on the retirement savings of a participant who experiences a hardship. The Committee believes that the combination of a 6-month contribution suspension and the other elements of the regulatory safe harbor will provide an adequate incentive for a participant to seek sources of funds other than his or her 401(k) plan account balance in order to satisfy financial hardships.

The present-law rules regarding the ability to rollover hardship distributions create administrative burdens for plan administrators and confusion on the part of plan participants. The Committee believes that providing a uniform rule for all hardship distributions will simplify application of the rollover rules.

EXPLANATION OF PROVISION

The Secretary of the Treasury is directed to revise the applicable regulations to reduce from 12 months to 6 months the period during which an employee must be prohibited from making elective contributions and employee contributions in order for a distribution to be deemed necessary to satisfy an immediate and heavy financial need. The revised regulations are to be effective for years beginning after December 31, 2001.

In addition, any distribution made upon hardship of an employee is not an eligible rollover distribution. Thus, such distributions may not be rolled over, and are subject to the withholding rules applicable to distributions that are not eligible rollover distributions. The provision does not modify the rules under which hardship distributions may be made. For example, as under present law, hardship distributions of qualified employer matching contributions are only permitted under the rules applicable to elective deferrals.

The provision is intended to clarify that all assets distributed as a hardship withdrawal, including assets attributable to employee elective deferrals and those attributable to employer matching or nonelective contributions, are ineligible for rollover. This rule is intended to apply to all hardship distributions from any tax qualified plan, including those made pursuant to standards set forth in section 401(k)(2)(B)(i)(IV) (which are applicable to section 401(k) plans and section 403(b) annuities) and to those treated as hardship distributions under any profit-sharing plan (whether or not in accordance with the standards set forth in section 401(k)(2)(B)(i)(IV)). For this purpose, a distribution that could be made either under the hardship provisions of a plan or under other provisions of the plan (such as provisions permitting in-service withdrawal of assets attributable to employer matching or nonelective contributions after a fixed period of years) could be treated as made upon hardship of the employee if the plan treats it that way. For example, if a plan makes an in-service distribution that consists of assets attributable to both elective deferrals (in circumstances where those assets could be distributed only upon hardship) and employer matching or nonelective contributions (which could be distributed in nonhardship circumstances under the plan), the plan is permitted to treat the distribution in its entirety as made upon hardship of the employee.

EFFECTIVE DATE

The provision directing the Secretary to revise the rules relating to safe harbor hardship distributions is effective on the date of enactment. The provision providing that hardship distributions are not eligible rollover distributions is effective for distributions made after December 31, 2001. The Secretary has the authority to issue transitional guidance with respect to the provision providing that hardship distributions are not eligible rollover distributions to provide sufficient time for plans to implement the new rule.

G. PENSION COVERAGE FOR DOMESTIC AND SIMILAR WORKERS

(Sec. 307 of the bill and sec. 4972(c)(6) of the Code)

PRESENT LAW

Under present law, within limits, employers may make deductible contributions to qualified retirement plans for employees. Subject to certain exceptions, a 10-percent excise tax applies to nondeductible contributions to such plans.

Employers of household workers may establish a pension plan for their employees. Contributions to such plans are not deductible because they are not made in connection with a trade or business of the employer.

REASONS FOR CHANGE

Under present law, individuals who employ domestic and similar workers may be discouraged from providing pension plan coverage for such employees because of the possible adverse tax consequences from making nondeductible contributions. As a result, such workers, who are typically lower income, may be denied the opportunity for tax-favored retirement savings. The Committee believes that such individuals who employ such workers should be encouraged to provide pension coverage.

EXPLANATION OF PROVISION

The 10-percent excise tax on nondeductible contributions does not apply to contributions to a SIMPLE plan or a SIMPLE IRA that are nondeductible solely because the contributions are not a trade or business expense under section 162 because they are not made in connection with a trade or business of the employer. Thus, for example, employers of household workers are able to make contributions to such plans without imposition of the excise tax. As under present law, the contributions are not deductible. The present-law rules applicable to such plans, e.g., contribution limits and nondiscrimination rules, continue to apply. The provision does not apply with respect to contributions on behalf of the individual and members of his or her family.

No inference is intended with respect to the application of the excise tax under present law to contributions that are not deductible because they are not made in connection with a trade or business of the employer.

As under present law, a plan covering domestic workers is not qualified unless the coverage rules are satisfied by aggregating all employees of family members taken into account under the attribution rules in section 414(c), but disregarding employees employed by a controlled group of corporations or a trade or business.

It is intended that the provision is restricted to contributions made by employers of household workers with respect to whom all applicable employment taxes have been and are being paid.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

TITLE IV. INCREASING PORTABILITY FOR PARTICIPANTS

A. ROLLOVERS OF RETIREMENT PLAN AND IRA DISTRIBUTIONS

(Secs. 401–403 and 409 of the bill and secs. 401, 402, 403(b), 408, 457, and 3405 of the Code)

PRESENT LAW

In general

Present law permits the rollover of funds from a tax-favored retirement plan to another tax-favored retirement plan. The rules that apply depend on the type of plan involved. Similarly, the rules regarding the tax treatment of amounts that are not rolled over depend on the type of plan involved.

Distributions from qualified plans

Under present law, an "eligible rollover distribution" from a tax-qualified employer-sponsored retirement plan may be rolled over tax free to a traditional individual retirement arrangement ("IRA")[29] or another qualified plan.[30] An "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified plan, except the term does not include (1) any distribution which is one of a series of substantially equal periodic payments made (a) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or (b) for a specified period of 10 years or more, (2) any distribution to the extent such distribution is required under the minimum distribution rules, and (3) certain hardship distributions. The maximum amount that can be rolled over is the amount of the distribution includible in income, i.e., after-tax employee contributions cannot be rolled over. Qualified plans are not required to accept rollovers.

Distributions from tax-sheltered annuities

Eligible rollover distributions from a tax-sheltered annuity ("section 403(b) annuity") may be rolled over into an IRA or another section 403(b) annuity. Distributions from a section 403(b) annuity cannot be rolled over into a tax-qualified plan. Section 403(b) annuities are not required to accept rollovers.

IRA distributions

Distributions from a traditional IRA, other than minimum required distributions, can be rolled over into another IRA. In general, distributions from an IRA cannot be rolled over into a qualified plan or section 403(b) annuity. An exception to this rule applies in the case of so-called "conduit IRAs." Under the conduit IRA rule, amounts can be rolled from a qualified plan into an IRA and then subsequently rolled back to another qualified plan if the amounts in the IRA are attributable solely to rollovers from a qualified plan. Similarly, an amount may be rolled over from a section 403(b) annuity to an IRA and subsequently rolled back into a section 403(b) annuity if the amounts in the IRA are attributable solely to rollovers from a section 403(b) annuity.

Distributions from section 457 plans

A "section 457 plan" is an eligible deferred compensation plan of a State or local government or tax-exempt employer that meets certain requirements. In some cases, different rules apply under section 457 to governmental plans and plans of tax-exempt employers. For example, governmental section 457 plans are like qualified plans in that plan assets are required to be held in a trust for the exclusive benefit of plan participants and beneficiaries. In contrast, benefits under a section 457 plan of a tax-exempt employer are unfunded, like nonqualified deferred compensation plans of private employers.

Section 457 benefits can be transferred to another section 457 plan. Distributions from a section 457 plan cannot be rolled over

[29] A "traditional" IRA refers to IRAs other than Roth IRAs or SIMPLE IRAs. All references to IRAs refer only to traditional IRAs.

[30] An eligible rollover distribution may either be rolled over by the distributee within 60 days of the date of the distribution or, as described below, directly rolled over by the distributing plan.

to another section 457 plan, a qualified plan, a section 403(b) annuity, or an IRA.

Rollovers by surviving spouses

A surviving spouse that receives an eligible rollover distribution may roll over the distribution into an IRA, but not a qualified plan or section 403(b) annuity.

Direct rollovers and withholding requirements

Qualified plans and section 403(b) annuities are required to provide that a plan participant has the right to elect that an eligible rollover distribution be directly rolled over to another eligible retirement plan. If the plan participant does not elect the direct rollover option, then withholding is required on the distribution at a 20-percent rate.[31]

Notice of eligible rollover distribution

The plan administrator of a qualified plan or a section 403(b) annuity is required to provide a written explanation of rollover rules to individuals who receive a distribution eligible for rollover. In general, the notice is to be provided within a reasonable period of time before making the distribution and is to include an explanation of (1) the provisions under which the individual may have the distribution directly rolled over to another eligible retirement plan, (2) the provision that requires withholding if the distribution is not directly rolled over, (3) the provision under which the distribution may be rolled over within 60 days of receipt, and (4) if applicable, certain other rules that may apply to the distribution. The Treasury Department has provided more specific guidance regarding timing and content of the notice.

Taxation of distributions

As is the case with the rollover rules, different rules regarding taxation of benefits apply to different types of tax-favored arrangements. In general, distributions from a qualified plan, section 403(b) annuity, or IRA are includible in income in the year received. In certain cases, distributions from qualified plans are eligible for capital gains treatment and averaging. These rules do not apply to distributions from another type of plan. Distributions from a qualified plan, IRA, and section 403(b) annuity generally are subject to an additional 10-percent early withdrawal tax if made before age 59½. There are a number of exceptions to the early withdrawal tax. Some of the exceptions apply to all three types of plans, and others apply only to certain types of plans. For example, the 10-percent early withdrawal tax does not apply to IRA distributions for educational expenses, but does apply to similar distributions from qualified plans and section 403(b) annuities. Benefits under a section 457 plan are generally includible in income when paid or made available. The 10-percent early withdrawal tax does not apply to section 457 plans.

[31] Distributions from qualified plans and section 403(b) annuities that are not eligible rollover distributions are subject to elective withholding. Periodic distributions are subject to withholding as if the distribution were wages; nonperiodic distributions are subject to withholding at a rate of 10 percent. In either case, the individual may elect not to have withholding apply.

REASONS FOR CHANGE

Present law encourages individuals who receive distributions from qualified plans and similar arrangements to save those distributions for retirement by facilitating tax-free rollovers to an IRA or another qualified plan. The Committee believes that expanding the rollover options for individuals in employer-sponsored retirement plans and owners of IRAs will provide further incentives for individuals to continue to accumulate funds for retirement. The Committee believes it appropriate to extend the same rollover rules to governmental section 457 plans; like qualified plans, such plans are required to hold plan assets in trust for employees.

EXPLANATION OF PROVISION

In general

The provision provides that eligible rollover distributions from qualified retirement plans, section 403(b) annuities, and governmental section 457 plans generally could be rolled over to any of such plans or arrangements.[32] Similarly, distributions from an IRA generally are permitted to be rolled over into a qualified plan, section 403(b) annuity, or governmental section 457 plan. The direct rollover and withholding rules are extended to distributions from a governmental section 457 plan, and such plans are required to provide the written notification regarding eligible rollover distributions.[33] The rollover notice (with respect to all plans) is required to include a description of the provisions under which distributions from the plan to which the distribution is rolled over may be subject to restrictions and tax consequences different than those applicable to distributions from the distributing plan. Qualified plans, section 403(b) annuities, and section 457 plans would not be required to accept rollovers.

Some special rules apply in certain cases. A distribution from a qualified plan is not eligible for capital gains or averaging treatment if there was a rollover to the plan that would not have been permitted under present law. Thus, in order to preserve capital gains and averaging treatment for a qualified plan distribution that is rolled over, the rollover would have to be made to a "conduit IRA" as under present law, and then rolled back into a qualified plan. Amounts distributed from a section 457 plan are subject to the early withdrawal tax to the extent the distribution consists of amounts attributable to rollovers from another type of plan. Section 457 plans are required to separately account for such amounts.

Rollover of after-tax contributions

The provision provides that employee after-tax contributions may be rolled over into another qualified plan or a traditional IRA. In the case of a rollover from a qualified plan to another qualified

[32] Hardship distributions from governmental section 457 plans would be considered eligible rollover distributions.

[33] The elective withholding rules applicable to distributions from qualified plans and section 403(b) annuities that are not eligible rollover distributions are also extended to distributions from governmental section 457 plans. Thus, periodic distributions from governmental section 457 plans that are not eligible rollover distributions are subject to withholding as if the distribution were wages and nonperiodic distributions from such plans that are not eligible rollover distributions are subject to withholding at a 10-percent rate. In either case, the individual may elect not to have withholding apply.

plan, the rollover is permitted to be accomplished only through a direct rollover. In addition, a qualified plan would not be permitted to accept rollovers of after-tax contributions unless the plan provides separate accounting for such contributions (and earnings thereon). After-tax contributions (including nondeductible contributions to an IRA) would not be permitted to be rolled over from an IRA into a qualified plan, tax-sheltered annuity, or section 457 plan.

In the case of a distribution from a traditional IRA that is rolled over into an eligible rollover plan that is not an IRA, the distribution is attributed first to amounts other than after-tax contributions.

Expansion of spousal rollovers

The provision provides that surviving spouses may roll over distributions to a qualified plan, section 403(b) annuity, or governmental section 457 plan in which the surviving spouse participates.

Treasury regulations

The Secretary is directed to prescribe rules necessary to carry out the provision. Such rules may include, for example, reporting requirements and mechanisms to address mistakes relating to rollovers. It is anticipated that the IRS would develop forms to assist individuals who roll over after-tax contributions to an IRA in keeping track of such contributions. Such forms could, for example, expand Form 8606—Nondeductible IRAs, to include information regarding after-tax contributions.

EFFECTIVE DATE

The provision is effective for distributions made after December 31, 2001. It is intended that the Secretary will revise the safe harbor rollover notice that plans may use to satisfy the rollover requirements. No penalty is imposed on a plan for a failure to provide the information required under the provision with respect to any distribution made before the date that is 90 days after the date the Secretary issues a new safe harbor rollover notice, if the plan administrator makes a reasonable attempt to comply with such notice requirement. For example, the provision requires that the rollover notice include a description of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making the distribution. A plan is treated as making a reasonable good faith effort to comply with this requirement if the notice states that distributions from the plan to which the rollover is made may be subject to different restrictions and tax consequences than those that apply to distributions from the plan from which the rollover is made.

B. Waiver of 60-Day Rule

(Sec. 404 of the bill and secs. 402 and 408 of the Code)

PRESENT LAW

Under present law, amounts received from an IRA or qualified plan may be rolled over tax free if the rollover is made within 60 days of the date of the distribution. The Secretary does not have the authority to waive the 60-day requirement, except during military service in a combat zone or by reason of a Presidentially declared disaster. The Secretary has issued regulations postponing the 60-day rule in such cases.

REASONS FOR CHANGE

The inability of the Secretary to waive the 60-day rollover period may result in adverse tax consequences for individuals. The Committee believes such harsh results are inappropriate and that providing for waivers of the rule will help facilitate rollovers.

EXPLANATION OF PROVISION

The provision provides that the Secretary may waive the 60-day rollover period if the failure to waive such requirement would be against equity or good conscience, including cases of casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. For example, the Secretary may issue guidance that includes objective standards for a waiver of the 60-day rollover period, such as waiving the rule due to military service in a combat zone or during a Presidentially declared disaster (both of which are provided for under present law), or for a period during which the participant has received payment in the form of a check, but has not cashed the check, or for errors committed by a financial institution.

EFFECTIVE DATE

The provision applies to distributions made after December 31, 2001.

C. Treatment of Forms of Distribution

(Sec. 405 of the bill and sec. 411(d)(6) of the Code)

PRESENT LAW

An amendment of a qualified retirement plan may not decrease the accrued benefit of a plan participant. An amendment is treated as reducing an accrued benefit if, with respect to benefits accrued before the amendment is adopted, the amendment has the effect of either (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) except as provided by Treasury regulations, eliminating an optional form of benefit (sec. 411(d)(6)).[34]

Under regulations recently issued by the Secretary,[35] this prohibition against the elimination of an optional form of benefit does not apply in the case of (1) a defined contribution plan that offers

[34] A similar provision is contained in Title I of ERISA.
[35] Treas. Reg. sec. 1.411(d)–4, Q&A–2(e) and Q&A–(3)(b).

a lump sum at the same time as the form being eliminated if the participant receives at least 90 days' advance notice of the elimination, or (2) a voluntary transfer between defined contribution plans, subject to the requirements that a transfer from a money purchase pension plan, an ESOP, or a section 401(k) plan must be to a plan of the same type and that the transfer be made in connection with certain corporate mergers, acquisitions, or similar transactions or changes in employment status.

REASONS FOR CHANGE

The Committee understands that the application of the prohibition against the elimination of any optional form of benefit frequently results in complexity and confusion, especially in the context of business acquisitions and similar transactions, and makes it difficult for participants to understand their benefit options and make choices that are best-suited to their needs. The Committee believes that it is appropriate to permit the elimination of duplicative benefit options that develop following plan mergers and similar events while ensuring that meaningful early retirement benefit payment options and subsidies may not be eliminated. In addition, the Committee understands that a defined contribution plan participant who is entitled to receive a single sum distribution generally may roll over such a distribution to an IRA and control the manner of distribution from the IRA, thus reducing the need to prohibit the elimination of all optional forms of benefits.

EXPLANATION OF PROVISION

A defined contribution plan to which benefits are transferred would not be treated as reducing a participant's or beneficiary's accrued benefit even though it does not provide all of the forms of distribution previously available under the transferor plan if (1) the plan receives from another defined contribution plan a direct transfer of the participant's or beneficiary's benefit accrued under the transferor plan, or the plan results from a merger or other transaction that has the effect of a direct transfer (including consolidations of benefits attributable to different employers within a multiple employer plan), (2) the terms of both the transferor plan and the transferee plan authorize the transfer, (3) the transfer occurs pursuant to a voluntary election by the participant or beneficiary that is made after the participant or beneficiary received a notice describing the consequences of making the election, and (4) the transferee plan allows the participant or beneficiary to receive distribution of his or her benefit under the transferee plan in the form of a single sum distribution. The bill does not modify the rules relating to survivor annuities under section 417. Thus, as under present law, a plan that is a transferee of a plan subject to the joint and survivor rules is also subject to those rules.

Except to the extent provided by the Secretary of the Treasury in regulations, a defined contribution plan is not treated as reducing a participant's accrued benefit if (1) a plan amendment eliminates a form of distribution previously available under the plan, (2) a single sum distribution is available to the participant at the same time or times as the form of distribution eliminated by the amendment, and (3) the single sum distribution is based on the same or greater portion of the participant's accrued benefit as the form of distribution eliminated by the amendment.

Furthermore, the provision directs the Secretary of the Treasury to provide by regulations that the prohibitions against eliminating or reducing an early retirement benefit, a retirement-type subsidy, or an optional form of benefit do not apply to plan amendments that eliminate or reduce early retirement benefits, retirement-type subsidies, and optional forms of benefit that create significant burdens and complexities for a plan and its participants, but only if such an amendment does not adversely affect the rights of any participant in more than a de minimis manner.

It is intended that the factors to be considered in determining whether an amendment has more than a de minimis adverse effect on any participant would include (1) all of the participant's early retirement benefits, retirement-type subsidies, and optional forms of benefits that are reduced or eliminated by the amendment, (2) the extent to which early retirement benefits, retirement-type subsidies, and optional forms of benefit in effect with respect to a participant after the amendment effective date provide rights that are comparable to the rights that are reduced or eliminated by the plan amendment, (3) the number of years before the participant attains normal retirement age under the plan (or early retirement age, as applicable), (4) the size of the participant's benefit that is affected by the plan amendment, in relation to the amount of the participant's compensation, and (5) the number of years before the plan amendment is effective.

This provision of the bill does not affect the rules relating to involuntary cash outs (sec. 411(a)(11)) or survivor annuity requirements (sec. 417). Accordingly, if a participant is entitled to protections of the joint and survivor rules, those protections may not be eliminated. The intent of the provision authorizing regulations is solely to permit the elimination of early retirement benefits, retirement-type subsidies, or optional forms of benefit that have no more than a de minimis effect on any participant but create disproportionate burdens and complexities for a plan and its participants.

For example, assume the following. Employer A acquires employer B and merges B's defined benefit plan into A's defined benefit plan. The defined benefit plan maintained by B before the merger provides an early retirement subsidy for individuals age 55 with a specified number of years of service. E1 and E2 are were employees of B and who transfer to A in connection with the merger. E1 is 25 years old and has compensation of $40,000. The present value of E1's early retirement subsidy under B's plan is $75. E2 is 50 years old and also has compensation of $40,000. The present value of E2's early retirement subsidy under B's plan is $10,000.

Assume that A's plan has an early retirement subsidy for individuals who have attained age 50 with a specified number of years of service, but the subsidy is not the same as under B's plan. Under A's plan, the present value of E2's early retirement subsidy is $9,500. Maintenance of both subsidies would create burdens for the plan and complexities for the plan and its participants.

Treasury regulations could permit E1's early retirement subsidy under B's plan to be eliminated entirely (i.e., even if A's plan did not have an early retirement subsidy). Taking into account all relevant factors, including the value of the benefit, E1's compensation, and the number of years until E1 would be eligible to receive the subsidy, the subsidy is de minimis. Treasury regulations could permit E2's early retirement subsidy under B's plan to be eliminated as to be replaced by the subsidy under A's plan, because the difference in the subsidies is de minimis. However, A's subsidy could not be entirely eliminated.

The Secretary is directed to issue, not later than December 31, 2003, final regulations under section 411(d)(6), including regulations required under the provision.

EFFECTIVE DATE

The provision is effective for years beginning after December 31, 2001, except that the direction to the Secretary is effective on the date of enactment.

D. RATIONALIZATION OF RESTRICTIONS ON DISTRIBUTIONS

(Sec. 406 of the bill and secs. 401(k), 403(b), and 457 of the Code)

PRESENT LAW

Elective deferrals under a qualified cash or deferred arrangement ("section 401(k) plan"), tax-sheltered annuity ("section 403(b) annuity"), or an eligible deferred compensation plan of a tax-exempt organization or State or local government ("section 457 plan"), may not be distributable prior to the occurrence of one or more specified events. These permissible distributable events include "separation from service."

A separation from service occurs only upon a participant's death, retirement, resignation or discharge, and not when the employee continues on the same job for a different employer as a result of the liquidation, merger, consolidation or other similar corporate transaction. A severance from employment occurs when a participant ceases to be employed by the employer that maintains the plan. Under a so-called "same desk rule," a participant's severance from employment does not necessarily result in a separation from service.[36]

In addition to separation from service and other events, a section 401(k) plan that is maintained by a corporation may permit distributions to certain employees who experience a severance from employment with the corporation that maintains the plan but do not experience a separation from service because the employees continue on the same job for a different employer as a result of a corporate transaction. If the corporation disposes of substantially all of the assets used by the corporation in a trade or business, a distributable event occurs with respect to the accounts of the employees who continue employment with the corporation that acquires the assets. If the corporation disposes of its interest in a subsidiary, a distributable event occurs with respect to the accounts of the employees who continue employment with the subsidiary. Under a recent IRS ruling, a person is generally deemed to have separated from service if that person is transferred to an-

[36] Rev. Rul. 79–336, 1979–2 C.B. 187.

other employer in connection with a sale of less than substantially all the assets of a trade or business.[37]

REASONS FOR CHANGE

The Committee believes that application of the "same desk" rule is inappropriate because it hinders portability of retirement benefits, creates confusion for employees, and results in significant administrative burdens for employers that engage in business acquisition transactions.

EXPLANATION OF PROVISION

The provision modifies the distribution restrictions applicable to section 401(k) plans, section 403(b) annuities, and section 457 plans to provide that distribution may occur upon severance from employment rather than separation from service. In addition, the provisions for distribution from a section 401(k) plan based upon a corporation's disposition of its assets or a subsidiary are repealed; this special rule is no longer necessary under the provision.

EFFECTIVE DATE

The provision is effective for distributions after December 31, 2001, regardless of when the severance of employment occurred.

E. Purchase of Service Credit under Governmental Pension Plans

(Sec. 407 of the bill and secs. 403(b) and 457 of the Code)

PRESENT LAW

A qualified retirement plan maintained by a State or local government employer may provide that a participant may make after-tax employee contributions in order to purchase permissive service credit, subject to certain limits (sec. 415). Permissive service credit means credit for a period of service recognized by the governmental plan only if the employee voluntarily contributes to the plan an amount (as determined by the plan) that does not exceed the amount necessary to fund the benefit attributable to the period of service and that is in addition to the regular employee contributions, if any, under the plan.

In the case of any repayment of contributions and earnings to a governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan (or another plan maintained by a State or local government employer within the same State), any such repayment is not taken into account for purposes of the section 415 limits on contributions and benefits. Also, service credit obtained as a result of such a repayment is not considered permissive service credit for purposes of the section 415 limits.

A participant may not use a rollover or direct transfer of benefits from a tax-sheltered annuity ("section 403(b) annuity") or an eligible deferred compensation plan of a tax-exempt organization or a State or local government ("section 457 plan") to purchase permis-

[37] Rev. Rul. 2000–27, 2000–21 I.R.B. 1016.

sive service credits or repay contributions and earnings with respect to a forfeiture of service credit.

REASONS FOR CHANGE

The Committee understands that many employees work for multiple State or local government employers during their careers. The Committee believes that allowing such employees to use their section 403(b) annuity and section 457 plan accounts to purchase permissive service credits or make repayments with respect to forfeitures of service credit will result in more significant retirement benefits for employees who would not otherwise be able to afford such credits or repayments.

EXPLANATION OF PROVISION

A participant in a State or local governmental plan is not required to include in gross income a direct trustee-to-trustee transfer to a governmental defined benefit plan from a section 403(b) annuity or a section 457 plan if the transferred amount is used (1) to purchase permissive service credits under the plan, or (2) to repay contributions and earnings with respect to an amount previously refunded under a forfeiture of service credit under the plan (or another plan maintained by a State or local government employer within the same State).

EFFECTIVE DATE

The provision is effective for transfers after December 31, 2001.

F. EMPLOYERS MAY DISREGARD ROLLOVERS FOR PURPOSES OF CASH-OUT RULES

(Sec. 408 of the bill and sec. 411(a)(11) of the Code)

PRESENT LAW

If an qualified retirement plan participant ceases to be employed by the employer that maintains the plan, the plan may distribute the participant's nonforfeitable accrued benefit without the consent of the participant and, if applicable, the participant's spouse, if the present value of the benefit does not exceed $5,000. If such an involuntary distribution occurs and the participant subsequently returns to employment covered by the plan, then service taken into account in computing benefits payable under the plan after the return need not include service with respect to which a benefit was involuntarily distributed unless the employee repays the benefit.[38]

Generally, a participant may roll over an involuntary distribution from a qualified plan to an IRA or to another qualified plan.[39]

REASONS FOR CHANGE

The present-law cash-out rule reflects a balancing of various policies. On the one hand is the desire to assist individuals to save for retirement by making it easier to keep retirement funds in tax-favored vehicles. On the other hand is the recognition that keeping

[38] A similar provision is contained in Title I of ERISA.
[39] Other provisions expand the kinds of plans to which benefits may be rolled over.

track of small account balances of former employees creates administrative burdens for plans.

The Committee is concerned that, in some cases, the cash-out rule may discourage plans from accepting rollovers because the rollover will increase participants' benefits to above the cash-out amount, and increase administrative burdens. The Committee believes that disregarding rollovers for purposes of the cash-out rule will further the intent of the cash-out rule by removing a possible disincentive for plans to accept rollovers.

EXPLANATION OF PROVISION

For purposes of the cash-out rule, a plan is permitted to provide that the present value of a participant's nonforfeitable accrued benefit is determined without regard to the portion of such benefit that is attributable to rollover contributions (and any earnings allocable thereto).

EFFECTIVE DATE

The provision is effective for distributions after December 31, 2001.

G. Minimum Distribution and Inclusion Requirements for Section 457 Plans

(Sec. 409 of the bill and sec. 457 of the Code)

PRESENT LAW

A "section 457 plan" is an eligible deferred compensation plan of a State or local government or tax-exempt employer that meets certain requirements. For example, amounts deferred under a section 457 plan cannot exceed certain limits. Amounts deferred under a section 457 plan are generally includible in income when paid or made available. Amounts deferred under a plan of deferred compensation of a State or local government or tax-exempt employer that does not meet the requirements of section 457 are includible in income when the amounts are not subject to a substantial risk of forfeiture, regardless of whether the amounts have been paid or made available.[40]

Section 457 plans are subject to the minimum distribution rules applicable to tax-qualified pension plans. In addition, such plans are subject to additional minimum distribution rules (sec. 457(d)(2)(B)).

REASONS FOR CHANGE

The Committee believes that the rules for timing of inclusion of benefits under a governmental section 457 plan should be conformed to the rules relating to qualified plans. The Committee also believes that section 457 plans should be subject to the same minimum distribution rules applicable to qualified plans.

[40] This rule of inclusion does not apply to amounts deferred under a tax-qualified retirement plan or similar plans.

EXPLANATION OF PROVISION

The provision provides that amounts deferred under a section 457 plan of a State or local government are includible in income when paid. The provision also repeals the special minimum distribution rules applicable to section 457 plans. Thus, such plans are subject to the minimum distribution rules applicable to qualified plans.

EFFECTIVE DATE

The provision is effective for distributions after December 31, 2001.

TITLE V. STRENGTHENING PENSION SECURITY AND ENFORCEMENT

A. Phase in Repeal of 160 Percent of Current Liability Funding Limit; Deduction for Contributions to Fund Termination Liability

(Secs. 501 and 502 of the bill and secs. 404(a)(1), 412(c)(7), and 4972(c) of the Code)

PRESENT LAW

Under present law, defined benefit pension plans are subject to minimum funding requirements designed to ensure that pension plans have sufficient assets to pay benefits. A defined benefit pension plan is funded using one of a number of acceptable actuarial cost methods.

No contribution is required under the minimum funding rules in excess of the full funding limit. The full funding limit is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 160 percent of the plan's current liability, over (2) the value of the plan's assets (sec. 412(c)(7)).[41] In general, current liability is all liabilities to plan participants and beneficiaries accrued to date, whereas the accrued liability full funding limit is based on projected benefits. The current liability full funding limit is scheduled to increase as follows: 165 percent for plan years beginning in 2003 and 2004, and 170 percent for plan years beginning in 2005 and thereafter.[42] In no event is a plan's full funding limit less than 90 percent of the plan's current liability over the value of the plan's assets.

An employer sponsoring a defined benefit pension plan generally may deduct amounts contributed to satisfy the minimum funding standard for the plan year. Contributions in excess of the full funding limit generally are not deductible. Under a special rule, an employer that sponsors a defined benefit pension plan (other than a multiemployer plan) which has more than 100 participants for the plan year may deduct amounts contributed of up to 100 percent of the plan's unfunded current liability.

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[41] The minimum funding requirements, including the full funding limit, are also contained in title I of ERISA.

[42] As originally enacted in the Pension Protection Act of 1997, the current liability full funding limit was 150 percent of current liability. The Taxpayer Relief Act of 1997 increased the current liability full funding limit to 155 percent in 1999 and 2000, 160 percent in 2001 and 2002, and adopted the scheduled increases described in the text.

REASONS FOR CHANGE

The Committee is concerned that the current liability full funding limit, which focuses on current but not projected benefits, may result in inadequate funding of pension plans and thus jeopardize pension security. The Committee believes that repealing the current liability full funding limit will encourage responsible pension funding and help ensure that plan participants receive promised benefits. Also, the Committee believes that the special deduction rule should be expanded to give more plan sponsors incentives to adequately fund their plans.

EXPLANATION OF PROVISION

Current liability full funding limit

The provision gradually increases and then repeals the current liability full funding limit. Under the bill, the current liability full funding limit is 165 percent of current liability for plan years beginning in 2002, and 170 percent for plan years beginning in 2003. The current liability full funding limit is repealed for plan years beginning in 2004 and thereafter. Thus, in 2004 and thereafter, the full funding limit is the excess, if any, of (1) the accrued liability under the plan (including normal cost), over (2) the value of the plan's assets.

Deduction for contributions to fund termination liability

The special rule allowing a deduction for unfunded current liability generally is extended to all defined benefit pension plans, i.e., the provision would apply to multiemployer plans and plans with 100 or fewer participants. The special rule does not apply to plans not covered by the PBGC termination insurance program.[43]

The provision also would modify the rule by providing that the deduction is for up to 100 percent of unfunded termination liability, determined as if the plan terminated at the end of the plan year. In the case of a plan with less than 100 participants for the plan year, termination liability would not include the liability attributable to benefit increases for highly compensated employees resulting from a plan amendment which was made or became effective, whichever is later, within the last two years.

General Accounting Office study

In connection with the Committee's desire to strengthen pension security, the Committee directs the General Accounting Office to conduct a study examining the extent to which certain present-law rules create obstacles or disincentives for taxpayers experiencing financial hardships to make current and future contributions to underfunded defined benefit pension plans. The Committee is concerned that, as a result of not obtaining a current or carryback deduction for pension contributions, taxpayers experiencing financial hardships will be subject to higher after-tax costs of maintaining pension funding levels. In the study, the General Accounting Office is to consider whether pension funding would be enhanced if section 172(f), which since 1998 has permitted only listed items to be

[43] The PBGC termination insurance program does not cover plans of professional service employers that have fewer than 25 participants.

carried back, were modified to list deductions for payments to defined benefit pension plans as an item for which 10-year specified loss carrybacks may be available. This study is to be submitted to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than one year after the date of enactment.

EFFECTIVE DATE

The provision is effective for plan years beginning after December 31, 2001.

B. EXCISE TAX RELIEF FOR SOUND PENSION FUNDING

(Sec. 503 of the bill and sec. 4972 of the Code)

PRESENT LAW

Under present law, defined benefit pension plans are subject to minimum funding requirements designed to ensure that pension plans have sufficient assets to pay benefits. A defined benefit pension plan is funded using one of a number of acceptable actuarial cost methods.

No contribution is required under the minimum funding rules in excess of the full funding limit. The full funding limit is generally defined as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 160 percent of the plan's current liability, over (2) the value of the plan's assets (sec. 412(c)(7)). In general, current liability is all liabilities to plan participants and beneficiaries accrued to date, whereas the accrued liability full funding limit is based on projected benefits. The current liability full funding limit is scheduled to increase as follows: 165 percent for plan years beginning in 2003 and 2004, and 170 percent for plan years beginning in 2005 and thereafter.[44] In no event is a plan's full funding limit less than 90 percent of the plan's current liability over the value of the plan's assets.

An employer sponsoring a defined benefit pension plan generally may deduct amounts contributed to satisfy the minimum funding standard for the plan year. Contributions in excess of the full funding limit generally are not deductible. Under a special rule, an employer that sponsors a defined benefit pension plan (other than a multiemployer plan) which has more than 100 participants for the plan year may deduct amounts contributed of up to 100 percent of the plan's unfunded current liability.

Present law also provides that contributions to defined contribution plans are deductible, subject to certain limitations.

Subject to certain exceptions, an employer that makes nondeductible contributions to a plan is subject to an excise tax equal to 10 percent of the amount of the nondeductible contributions for the year. The 10-percent excise tax does not apply to contributions to certain terminating defined benefit plans. The 10-percent excise tax also does not apply to contributions of up to 6 percent of com-

[44] As originally enacted in the Pension Protection Act of 1997, the current liability full funding limit was 150 percent of current liability. The Taxpayer Relief Act of 1997 increased the current liability full funding limit to 155 percent in 1999 and 2000, 160 percent in 2001 and 2002, and adopted the scheduled increases described in the text. Another provision would gradually increase and then repeal the current liability full funding limit.

pensation to a defined contribution plan for employer matching and employee elective deferrals.

REASONS FOR CHANGE

The Committee believes that employers should be encouraged to adequately fund their pension plans. Therefore, the Committee does not believe that an excise tax should be imposed on employer contributions that do not exceed the accrued liability full funding limit.

EXPLANATION OF PROVISION

In determining the amount of nondeductible contributions, the employer is permitted to elect not to take into account contributions to a defined benefit pension plan except to the extent they exceed the accrued liability full funding limit. Thus, if an employer elects, contributions in excess of the current liability full funding limit would not be subject to the excise tax on nondeductible contributions. An employer making such an election for a year would not be permitted to take advantage of the present-law exceptions for certain terminating plans and certain contributions to defined contribution plans. The provision applies to terminated plans as well as ongoing plans.

EFFECTIVE DATE

The provision is effective for years beginning after December 31, 2001.

C. Notice of Significant Reduction in Plan Benefit Accruals

(Sec. 504 of the bill and new sec. 4980f of the Code)

PRESENT LAW

Section 204(h) of Title I of ERISA provides that a defined benefit pension plan or a money purchase pension plan may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice ("section 204(h) notice"), setting forth the plan amendment (or a summary of the amendment written in a manner calculated to be understood by the average plan participant) and its effective date. The plan administrator must provide the section 204(h) notice to each plan participant, each alternate payee under an applicable qualified domestic relations order ("QDRO"), and each employee organization representing participants in the plan. The applicable Treasury regulations[45] provide, however, that a plan administrator need not provide the section 204(h) notice to any participant or alternate payee whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment, nor to an employee organization that does not represent a participant to whom the section 204(h) notice must be provided. In addition, the regulations provide that the rate of future benefit accrual is determined without regard to optional forms of benefit, early retirement benefits, retirement-type

[45] Treas. Reg. sec. 1.411(d)–6.

subsidiaries, ancillary benefits, and certain other rights and features.

A covered amendment generally will not become effective with respect to any participants and alternate payees whose rate of future benefit accrual is reasonably expected to be reduced by the amendment but who do not receive a section 204(h) notice. An amendment will become effective with respect to all participants and alternate payees to whom the section 204(h) notice was required to be provided if the plan administrator (1) has made a good faith effort to comply with the section 204(h) notice requirements, (2) has provided a section 204(h) notice to each employee organization that represents any participant to whom a section 204(h) notice was required to be provided, (3) has failed to provide a section 204(h) notice to no more than a de minimis percentage of participants and alternate payees to whom a section 204(h) notice was required to be provided, and (4) promptly upon discovering the oversight, provides a section 204(h) notice to each omitted participant and alternate payee.

The Internal Revenue Code does not require any notice concerning a plan amendment that provides for a significant reduction in the rate of future benefit accrual.

REASONS FOR CHANGE

The Committee is aware of recent significant publicity concerning conversions of traditional defined benefit pension plans to "cash balance" plans, with particular focus on the impact such conversions have on affected workers. Several legislative proposals have been introduced to address some of the issues relating to such conversions.

The Committee believes that employees are entitled to meaningful disclosure concerning plan amendments that may result in reductions of future benefit accruals. The Committee has determined that present law does not require employers to provide such disclosure, particularly in cases where traditional defined benefit plans are converted to cash balance plans. The Committee also believes that any disclosure requirements applicable to plan amendments should strike a balance between providing meaningful disclosure and avoiding the imposition of unnecessary administrative burdens on employers, and that this balance may best be struck through the regulatory process with an opportunity for input from affected parties.

The Committee understands that there are other issues in addition to disclosure that have arisen with respect to the conversion of defined benefit plans to cash balance or other hybrid plans, particularly situations in which plan participants do not earn any additional benefit under the plan for some time after conversion (called a "wear away"). The Committee believes that this issue should be further studied by the Treasury in order to provide guidance to the Congress.

EXPLANATION OF PROVISION

The provision adds to the Internal Revenue Code a requirement that the plan administrator of a defined benefit pension plan or a money purchase pension plan furnish a written notice concerning a plan amendment that provides for a significant reduction in the rate of future benefit accrual, including any elimination or reduction of an early retirement benefit or retirement-type subsidy. The plan administrator is required to provide in this notice, in a manner calculated to be understood by the average plan participant, sufficient information (as defined in Treasury regulations) to allow participants to understand the effect of the amendment.

The notice requirement does not apply to governmental plans or church plans with respect to which an election to have the qualified plan participation, vesting, and funding rules apply has not been made (sec. 410(d)). The provision authorizes the Secretary of the Treasury to provide a simplified notice requirement or an exemption from the notice requirement for plans with less than 100 participants and to allow any notice required under the provision to be provided by using new technologies. The provision also authorizes the Secretary to provide a simplified notice requirement or an exemption from the notice requirement if participants are given the option to choose between benefits under the new plan formula and the old plan formula. In such cases, the provision would have no effect on the fiduciary rules applicable to pension plans that may require appropriate disclosure to participants, even if no disclosure is required under the provision.

The plan administrator is required to provide this notice to each affected participant, each affected alternate payee, and each employee organization representing affected participants. For purposes of the provision, an affected participant or alternate payee is a participant or alternate payee whose rate of future benefit accrual may reasonably be expected to be significantly reduced by the plan amendment.

Except to the extent provided by Treasury regulations, the plan administrator is required to provide the notice within a reasonable time before the effective date of the plan amendment. The provision permits a plan administrator to provide any notice required under the provision to a person designated in writing by the individual to whom it would otherwise be provided.

The provision imposes on a plan administrator that fails to comply with the notice requirement an excise tax equal to $100 per day per omitted participant and alternate payee. No excise tax is imposed during any period during which any person subject to liability for the tax did not know that the failure existed and exercised reasonable diligence to meet the notice requirement. In addition, no excise tax is imposed on any failure if any person subject to liability for the tax exercised reasonable diligence to meet the notice requirement and such person provides the required notice during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence would have known, that the failure existed. Also, if the person subject to liability for the excise tax exercised reasonable diligence to meet the notice requirement, the total excise tax imposed during a taxable year of the employer would not exceed $500,000. Furthermore, in the case of a failure due to reasonable cause and not to willful neglect, the Secretary of the Treasury is authorized to waive the excise tax to the extent that the payment of the tax would be excessive relative to the failure involved.

It is intended under the provision that the Secretary issue the necessary regulations with respect to disclosure within 90 days of enactment. It is also intended that such guidance may be relatively detailed because of the need to provide for alternative disclosures rather than a single disclosure methodology that may not fit all situations, and the need to consider the complex actuarial calculations and assumptions involved in providing necessary disclosures.

In addition, the provision directs the Secretary of the Treasury to prepare a report on the effects of conversions of traditional defined benefit plans to cash balance or hybrid formula plans. Such study is to examine the effect of such conversions on longer service participants, including the incidence and effects of "wear away" provisions under which participants earn no additional benefits for a period of time after the conversion. The Secretary is directed to submit such report, together with recommendations thereon, to the Committee on Ways and Means and the Committee on Education and the Workforce of the House of Representatives and the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate as soon as practicable, but not later than 60 days after the date of enactment.

EFFECTIVE DATE

The provision is effective for plan amendments taking effect on or after the date of enactment. The period for providing any notice required under the provision would not end before the last day of the 3-month period following the date of enactment. Prior to the issuance of Treasury regulations, a plan is treated as meeting the requirements of the provision if the plan makes a good faith effort to comply with such requirements. The notice requirement under the provision does not apply to any plan amendment taking effect on or after the date of enactment if, before April 25, 2001, notice is provided to participants and beneficiaries adversely affected by the plan amendment (or their representatives) that is reasonably expected to notify them of the nature and effective date of the plan amendment.

D. Modifications to Section 415 Limits for Multiemployer Plans

(Sec. 505 of the bill and sec. 415 of the Code)

PRESENT LAW

Under present law, limits apply to contributions and benefits under qualified plans (sec. 415). The limits on contributions and benefits under qualified plans are based on the type of plan.

Under a defined benefit plan, the maximum annual benefit payable at retirement is generally the lesser of (1) 100 percent of average compensation for the highest three years, or (2) $140,000 (for 2001). The dollar limit is adjusted for cost-of-living increases in $5,000 increments. The dollar limit is reduced in the case of retirement before the social security retirement age and increases in the case of retirement after the social security retirement age.

A special rule applies to governmental defined benefit plans. In the case of such plans, the defined benefit dollar limit is reduced in the case of retirement before age 62 and increased in the case of retirement after age 65. In addition, there is a floor on early retirement benefits. Pursuant to this floor, the minimum benefit payable at age 55 is $75,000.

In the case of a defined contribution plan, the limit on annual is additions if the lesser of (1) 25 percent of compensation [46] or (2) $35,000 (for 2001).

In applying the limits on contributions and benefits, plans of the same employer are aggregated. That is, all defined benefit plans of the same employer are treated as a single plan, and all defined contribution plans of the same employer are treated as a single plan. Under Treasury regulations, multiemployer plans are not aggregated with other multiemployer plans. However, if an employer maintains both a plan that is not a multiemployer plan and a mulitemployer plan, the plan that is not a multiemployer plan is aggregated with the multiemployer plan to the extent that benefits provided under the multiemployer plan are provided with respect to a common participant.[47]

REASONS FOR CHANGE

The Committee understands that, because pension benefits under multiemployer plans are typically based upon factors other than compensation, the section 415 benefit limits frequently result in benefit reductions for employees in industries in which wages vary annually.

EXPLANATION OF PROVISION

Under the provision, the 100 percent of compensation defined benefit plan limit would not apply to multiemployer plans. With respect to aggregation of multiemployer plans with other plans, the provision provides that multiemployer plans are not aggregated with single-employer defined benefit plans maintained by an employer contributing to the multiemployer plan for purposes of applying the 100 percent of compensation limit to such single-employer plan.

EFFECTIVE DATE

The provision is effective for years beginning after December 31, 2001.

E. PROHIBITED ALLOCATIONS OF STOCK IN AN S CORPORATION ESOP

(Sec. 508 of the bill and secs. 409 and 4979a of the Code)

PRESENT LAW

The Small Business Job Protection Act of 1996 allowed qualified retirement plan trusts described in section 401(a) to own stock in an S corporation. That Act treated the plan's share of the S corporation's income (and gain on the disposition of the stock) as includible in full in the trust's unrelated business taxable income ("UBTI").

The Tax Relief Act of 1997 repealed the provision treating items of income or loss of an S corporation as UBTI in the case of an em-

[46] Another provision increases this limit to 100 percent of compensation.
[47] Treas. Reg. sec. 1.415–8(e).

ployee stock ownership plan ("ESOP"). Thus, the income of an S corporation allocable to an ESOP is not subject to current taxation.

Present law provides a deferral of income on the sales of certain employer securities to an ESOP (sec. 1042). A 50–percent excise tax is imposed on certain prohibited allocations of securities acquired by an ESOP in a transaction to which section 1042 applies. In addition, such allocations are currently includible in the gross income of the individual receiving the prohibited allocation.

REASONS FOR CHANGE

In enacting the 1996 Act provision allowing ESOPs to be shareholders of S corporations, the Congress intended to encourage employee ownership of closely-held businesses, and to facilitate the establishment of ESOPs by S corporations. At the same time, the Congress provided that all income flowing through to an ESOP (or other tax-exempt S shareholder), and gains and losses from the disposition of the stock, was treated as unrelated business taxable income. This treatment was consistent with the premise underlying the S corporation rules that all income of an S corporation (including all gains of the sale of the stock of the corporation) should be subject to a shareholder-level tax.

In enacting the present-law rule relating to S corporation ESOPs in 1997, the Congress was concerned that the 1996 Act rule imposed double taxation on such ESOPs and ESOP participants. The Congress believed such a result was inappropriate. Since the enactment of the 1997 Act, however, the Committee has become aware that the present-law rules allow inappropriate deferral and possibly tax avoidance in some cases.

The Committee continues to believe that S corporations should be able to encourage employee ownership through an ESOP. The Committee does not believe, however, that ESOPs should be used by S corporations owners to obtain inappropriate tax deferral or avoidance.

Specifically, the Committee believes that the tax deferral opportunities provided by an S corporation ESOP should be limited to those situations in which there is broad-based employee coverage under the ESOP and the ESOP benefits rank-and-file employees as well as highly compensated employees and historical owners.

EXPLANATION OF PROVISION

In general

Under the provision, if there is a nonallocation year with respect to an ESOP maintained by an S corporation: (1) the amount allocated in a prohibited allocation to an individual who is a disqualified person is treated as distributed to such individual (i.e., the value of the prohibited allocation is includible in the gross income of the individual receiving the prohibited allocation); (2) an excise tax is imposed on the S corporation equal to 50 percent of the amount involved in a prohibited allocation; and (3) an excise tax is imposed on the S corporation with respect to any synthetic equity owned by a disqualified person.[48]

[48] The plan is not disqualified merely because an excise tax is imposed under the provision.

It is intended that the provision will limit the establishment of ESOPs by S corporations to those that provide broad-based employee coverage and that benefit rank-and-file employees as well as highly compensated employees and historical owners.

Definition of nonallocation year

A nonallocation year means any plan year of an ESOP holding shares in an S corporation if, at any time during the plan year, disqualified persons own at least 50 percent of the number of outstanding shares of the S corporation.

A person is a disqualified person if the person is either (1) a member of a "deemed 20-percent shareholder group" or (2) a "deemed 10-percent shareholder." A person is a member of a "deemed 20-percent shareholder group" if the aggregate number of deemed-owned shares of the person and his or her family members is at least 20 percent of the number of deemed-owned shares of stock in the S corporation.[49] A person is a deemed 10-percent shareholder if the person is not a member of a deemed 20-percent shareholder group and the number of the person's deemed-owned shares is at least 10 percent of the number of deemed-owned shares of stock of the corporation.

In general, "deemed-owned shares" means: (1) stock allocated to the account of an individual under the ESOP, and (2) an individual's share of unallocated stock held by the ESOP. An individual's share of unallocated stock held by an ESOP is determined in the same manner as the most recent allocation of stock under the terms of the plan.

For purposes of determining whether there is a nonallocation year, ownership of stock generally is attributed under the rules of section 318,[50] except that: (1) the family attribution rules are modified to include certain other family members, as described below, (2) option attribution would not apply (but instead special rules relating to synthetic equity described below would apply), and (3) "deemed-owned shares" held by the ESOP are treated as held by the individual with respect to whom they are deemed owned.

Under the provision, family members of an individual include (1) the spouse[51] of the individual, (2) an ancestor or lineal descendant of the individual or his or her spouse, (3) a sibling of the individual (or the individual's spouse) and any lineal descendant of the brother or sister, and (4) the spouse of any person described in (2) or (3).

The provision contains special rules applicable to synthetic equity interests. Except to the extent provided in regulations, the stock on which a synthetic equity interest is based are treated as outstanding stock of the S corporation and as deemed-owned shares of the person holding the synthetic equity interest if such treatment would result in the treatment of any person as a disqualified person or the treatment of any year as a nonallocation year. Thus, for example, disqualified persons for a year include those individuals who are disqualified persons under the general rule (i.e., treat-

[49] A family member of a member of a "deemed 20-percent shareholder group" with deemed owned shares is also treated as a disqualified person.

[50] These attribution rules also apply to stock treated as owned by reason of the ownership of synthetic equity.

[51] As under section 318, an individual's spouse is not treated as a member of the individual's family if the spouses are legally separated.

ing only those shares held by the ESOP as deemed-owned shares) and those individuals who are disqualified individuals if synthetic equity interests are treated as deemed-owned shares.

"Synthetic equity" means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.[52]

Ownership of synthetic equity is attributed in the same manner as stock is attributed under the provision (as described above). In addition, ownership of synthetic equity is attributed under the rules of section 318(a)(2) and (3) in the same manner as stock.

Definition of prohibited allocation

An ESOP of an S corporation is required to provide that no portion of the assets of the plan attributable to (or allocable in lieu of) S corporation stock may, during a nonallocation year, accrue (or be allocated directly or indirectly under any qualified plan of the S corporation) for the benefit of a disqualified person. A "prohibited allocation" refers to violations of this provision. A prohibited allocation occurs, for example, if income on S corporation stock held by an ESOP is allocated to the account of an individual who is a disqualified person.

Application of excise tax

In the case of a prohibited allocation, the S corporation is liable for an excise tax equal to 50 percent of the amount of the allocation. For example, if S corporation stock is allocated in a prohibited allocation, the excise tax would equal to 50 percent of the fair market value of such stock.

A special rule would apply in the case of the first nonallocation year, regardless of whether there is a prohibited allocation. In that year, the excise tax also would apply to the fair market value of the deemed-owned shares of any disqualified person held by the ESOP, even though those shares are not allocated to the disqualified person in that year.

As mentioned above, the S corporation also is liable for an excise tax with respect to any synthetic equity interest owned by any disqualified person in a nonallocation year. The excise tax is 50 percent of the value of the shares on which synthetic equity is based.

Treasury regulations

The Treasury Department is given the authority to prescribe such regulations as may be necessary to carry out the purposes of the provision.

EFFECTIVE DATE

The provision generally is effective with respect to plan years beginning after December 31, 2004. In the case of an ESOP established after March 14, 2001, or an ESOP established on or before

[52] The provisions relating to synthetic equity do not modify the rules relating to S corporations, e.g., the circumstances in which options or similar interests are treated as creating a second class of stock.

such date if the employer maintaining the plan was not an S corporation on such date, the provision is effective with respect to plan years ending after March 14, 2001.

TITLE VI. REDUCING REGULATORY BURDENS

A. Modification of Timing of Plan Valuations

(Sec. 601 of the bill and sec. 412 of the Code)

PRESENT LAW

Under present law, plan valuations are generally required annually for plans subject to the minimum funding rules. Under proposed Treasury regulations, except as provided by the Commissioner, the valuation must be as of a date within the plan year to which the valuation refers or within the month prior to the beginning of that year.[53]

REASONS FOR CHANGE

While plan valuations are necessary to ensure adequate funding of defined benefit pension plans, they also create administrative burdens for employers. The Committee believes that permitting limited elections to use as the valuation date for a plan year any date within the immediately preceding plan year in the case of well-funded plans strikes an appropriate balance between funding concerns and employer concerns about plan administrative burdens.

EXPLANATION OF PROVISION

The provision incorporates into the statute the proposed regulation regarding the date of valuations. The provision also provides, as an exception to this general rule, that the valuation date with respect to a plan year may be any date within the immediately preceding plan year if, as of such date, plan assets are not less than 125 percent of the plan's current liability. Information determined as of such date is required to be adjusted actuarially, in accordance with Treasury regulations, to reflect significant differences in plan participants. An election to use a prior plan year valuation date, once made, may only be revoked with the consent of the Secretary.

EFFECTIVE DATE

The provision is effective for plan years beginning after December 31, 2001.

B. ESOP Dividends May Be Reinvested Without Loss of Dividend Deduction

(Sec. 602 of the bill and sec. 404 of the Code)

PRESENT LAW

An employer is entitled to deduct certain dividends paid in cash during the employer's taxable year with respect to stock of the employer that is held by an employee stock ownership plan ("ESOP").

[53] Prop. Treas. Reg. sec. 1.412(c)(9)-1(b)(1).

The deduction is allowed with respect to dividends that, in accordance with plan provisions, are (1) paid in cash directly to the plan participants or their beneficiaries, (2) paid to the plan and subsequently distributed to the participants or beneficiaries in cash no later than 90 days after the close of the plan year in which the dividends are paid to the plan, or (3) used to make payments on loans (including payments of interest as well as principal) that were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

The Secretary may disallow the deduction for any ESOP dividend if he determines that the dividend constitutes, in substance, an evasion of taxation (sec. 404(k)(5)).

REASONS FOR CHANGE

The Committee believes that it is appropriate to provide incentives for the accumulation of retirement benefits and expansion of employee ownership. The Committee has determined that the present-law rules concerning the deduction of dividends on employer stock held by an ESOP discourage employers from permitting such dividends to be reinvested in employer stock and accumulated for retirement purposes.

EXPLANATION OF PROVISION

In addition to the deductions permitted under present law for dividends paid with respect to employer securities that are held by an ESOP, an employer is entitled to deduct dividends that, at the election of plan participants or their beneficiaries, are (1) payable in cash directly to plan participants or beneficiaries, (2) paid to the plan and subsequently distributed to the participants or beneficiaries in cash no later than 90 days after the close of the plan year in which the dividends are paid to the plan, or (3) paid to the plan and reinvested in qualifying employer securities.

The provision permits the Secretary to disallow the deduction for any ESOP dividend if the Secretary determines that the dividend constitutes, in substance, the avoidance or evasion of taxation.

EFFECTIVE DATE

The provision is effective for taxable years beginning after December 31, 2001.

C. REPEAL TRANSITION RULE RELATING TO CERTAIN HIGHLY COMPENSATED EMPLOYEES

(Sec. 603 of the bill and sec. 1114(c)(4) of the Tax Reform Act of 1986)

PRESENT LAW

Under present law, for purposes of the rules relating to qualified plans, a highly compensated employee is generally defined as an employee[54] who (1) was a 5-percent owner of the employer at any time during the year or the preceding year or (2) either (a) had compensation for the preceding year in excess of $85,000 (for 2001) or (b) at the election of the employer, had compensation in excess

[5] An employee includes a self-employed individual.

of $85,000 for the preceding year and was in the top 20 percent of employees by compensation for such year.

Under a rule enacted in the Tax Reform Act of 1986, a special definition of highly compensated employee applies for purposes of the nondiscrimination rules relating to qualified cash or deferred arrangements ("section 401(k) plans") and matching contributions. This special definition applies to an employer incorporated on December 15, 1924, that meets certain specific requirements.

REASONS FOR CHANGE

The Committee believes it appropriate to repeal the special definition of highly compensated employee in light of the substantial modification of the general definition of highly compensated employee in the Small Business Job Protection Act of 1996.

EXPLANATION OF PROVISION

The provision repeals the special definition of highly compensated employee under the Tax Reform Act of 1986. Thus, the present-law definition applies.

EFFECTIVE DATE

The provision is effective for plan years beginning after December 31, 2001.

D. EMPLOYEES OF TAX-EXEMPT ENTITIES

(Sec. 604 of the bill)

PRESENT LAW

The Tax Reform Act of 1986 provided that nongovernmental tax-exempt employers were not permitted to maintain a qualified cash or deferred arrangement ("section 401(k) plan"). This prohibition was repealed, effective for years beginning after December 31, 1996, by the Small Business Job Protection Act of 1996.

Treasury regulations provide that, in applying the nondiscrimination rules to a section 401(k) plan (or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan), the employer may treat as excludable those employees of a tax-exempt entity who could not participate in the arrangement due to the prohibition on maintenance of a section 401(k) plan by such entities. Such employees may be disregarded only if more than 95 percent of the employees who could participate in the section 401(k) plan benefit under the plan for the plan year.[55]

Tax-exempt charitable organizations may maintain a tax-sheltered annuity (a "section 403(b) annuity") that allows employees to make salary reduction contributions.

REASONS FOR CHANGE

The Committee believes it appropriate to modify the special rule regarding the treatment of certain employees of a tax-exempt organization as excludable for section 401(k) plan nondiscrimination testing purposes in light of the provision of the Small Business Job

[55] Treas. Reg. sec. 1.410(b)–6(g).

Protection Act of 1996 that permits such organizations to maintain section 401(k) plans.

EXPLANATION OF PROVISION

The Treasury Department is directed to revise its regulations under section 410(b) to provide that employees of a tax-exempt charitable organization who are eligible to make salary reduction contributions under a section 403(b) annuity may be treated as excludable employees for purposes of testing a section 401(k) plan, or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan of the employer if (1) no employee of such tax-exempt entity is eligible to participate in the section 401(k) or 401(m) plan and (2) at least 95 percent of the employees who are not employees of the charitable employer are eligible to participate in such section 401(k) plan or section 401(m) plan.

The revised regulations are to be effective for years beginning after December 31, 1996.

EFFECTIVE DATE

The provision is effective on the date of enactment.

E. Treatment of Employer-Provided Retirement Advice

(Sec. 605 of the bill and sec. 132 of the Code)

PRESENT LAW

Under present law, certain employer-provided fringe benefits are excludable from gross income (sec. 132) and wages for employment tax purposes. These excludable fringe benefits include working condition fringe benefits and de minimis fringes. In general, a working condition fringe benefit is any property or services provided by an employer to an employee to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction as a business expense. A de minimis fringe benefit is any property or services provided by the employer the value of which, after taking into account the frequency with which similar fringes are provided, is so small as to make accounting for it unreasonable or administratively impracticable.

In addition, if certain requirements are satisfied, up to $5,250 annually of employer-provided educational assistance is excludable from gross income (sec. 127) and wages. This exclusion expires with respect to courses beginning after December 31, 2001.[56] Education not excludable under section 127 may be excludable as a working condition fringe.

There is no specific exclusion under present law for employer-provided retirement planning services. However, such services may be excludable as employer-provided educational assistance or a fringe benefit.

REASONS FOR CHANGE

In order to plan adequately for retirement, individuals must anticipate retirement income needs and understand how their retire-

[56] The exclusion does not apply with respect to graduate-level courses.

ment income goals can be achieved. Employer-sponsored plans are a key part of retirement income planning. The Committee believes that employers sponsoring retirement plans should be encouraged to provide retirement planning services for their employees in order to assist them in preparing for retirement.

EXPLANATION OF PROVISION

Qualified retirement planning services provided to an employee and his or her spouse by an employer maintaining a qualified plan are excludable from income and wages. The exclusion does not apply with respect to highly compensated employees unless the services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified plan. "Qualified retirement planning services" are retirement planning advice and information. The exclusion is not limited to information regarding the qualified plan, and, thus, for example, applies to advice and information regarding retirement income planning for an individual and his or her spouse and how the employer's plan fits into the individual's overall retirement income plan. On the other hand, the exclusion does not apply to services that may be related to retirement planning, such as tax preparation, accounting, legal or brokerage services.

It is intended that the provision will clarify the treatment of retirement advice provided in a nondiscriminatory manner. It is intended that the Secretary, in determining the application of the exclusion to highly compensated employees, may permit employers to take into consideration employee circumstances other than compensation and position in providing advice to classifications of employees. Thus, for example, the Secretary may permit employers to limit certain advice to individuals nearing retirement age under the plan.

EFFECTIVE DATE

The provision is effective with respect to years beginning after December 31, 2001.

F. Reporting Simplification

(Sec. 606 of the bill)

PRESENT LAW

A plan administrator of a pension, annuity, stock bonus, profit-sharing or other funded plan of deferred compensation generally must file with the Secretary of the Treasury an annual return for each plan year containing certain information with respect to the qualification, financial condition, and operation of the plan. Title I of ERISA also may require the plan administrator to file annual reports concerning the plan with the Department of Labor and the Pension Benefit Guaranty Corporation ("PBGC"). The plan administrator must use the Form 5500 series as the format for the required annual return.[57] The Form 5500 series annual return/report, which consists of a primary form and various schedules, in-

[57] Treas. Reg. sec. 301.6058–1(a).

cludes the information required to be filed with all three agencies. The plan administrator satisfies the reporting requirement with respect to each agency by filing the Form 5500 series annual return/report with the Department of Labor, which forwards the form to the Internal Revenue Service and the PBGC.

The Form 5500 series consists of 2 different forms: Form 5500 and Form 5500–EZ. Form 5500 is the more comprehensive of the forms and requires the most detailed financial information. A plan administrator generally may file Form 5500–EZ, which consists of only one page, if (1) the only participants in the plan are the sole owner of a business that maintains the plan (and such owner's spouse), or partners in a partnership that maintains the plan (and such partners' spouses), (2) the plan is not aggregated with another plan in order to satisfy the minimum coverage requirements of section 410(b), (3) the employer is not a member of a related group of employers, and (4) the employer does not receive the services of leased employees. If the plan satisfies the eligibility requirements for Form 5500–EZ and the total value of the plan assets as of the end of the plan year and all prior plan years beginning on or after January 1, 1994, does not exceed $100,000, the plan administrator is not required to file a return.

With respect to a plan that does not satisfy the eligibility requirements for Form 5500–EZ, the characteristics and the size of the plan determine the amount of detailed financial information that the plan administrator must provide on Form 5500. If the plan has more than 100 participants at the beginning of the plan year, the plan administrator generally must provide more information.

REASONS FOR CHANGE

The Committee believes that simplification of the reporting requirements applicable to plans of small employers will encourage such employers to provide retirement benefits for their employees.

EXPLANATION OF PROVISION

The Secretary of the Treasury is directed to modify the annual return filing requirements with respect to plans that satisfy the eligibility requirements for Form 5500–EZ to provide that if the total value of the plan assets of such a plan as of the end of the plan year and all prior plan years beginning on or after January 1, 1994, does not exceed $250,000, the plan administrator is not required to file a return. In addition, the provision would direct the Secretary of the Treasury and the Secretary of Labor to provide simplified reporting requirements for certain plans with fewer than 25 employees.

EFFECTIVE DATE

The provision is effective on January 1, 2002.

G. Improvement to Employee Plans Compliance Resolution System

(Sec. 607 of the bill)

PRESENT LAW

A retirement plan that is intended to be a tax-qualified plan provides retirement benefits on a tax-favored basis if the plan satisfies all of the requirements of section 401(a). Similarly, an annuity that is intended to be a tax-sheltered annuity provides retirement benefits on a tax-favored basis if the program satisfies all of the requirements of section 403(b). Failure to satisfy all of the applicable requirements of section 401(a) or section 403(b) may disqualify a plan or annuity for the intended tax-favored treatment.

The Internal Revenue Service ("IRS") has established the Employee Plans Compliance Resolution System ("EPCRS"), which is a comprehensive system of correction programs for sponsors of retirement plans and annuities that are intended, but have failed, to satisfy the requirements of section 401(a), section 403(a), or section 403(b), as applicable.[58] EPCRS permits employers to correct compliance failures and continue to provide their employees with retirement benefits on a tax-favored basis.

The IRS has designed EPCRS to (1) encourage operational and formal compliance, (2) promote voluntary and timely correction of compliance failures, (3) provide sanctions for compliance failures identified on audit that are reasonable in light of the nature, extent, and severity of the violation, (4) provide consistent and uniform administration of the correction programs, and (5) permit employers to rely on the availability of EPCRS in taking corrective actions to maintain the tax-favored status of their retirement plans and annuities.

The basic elements of the programs that comprise EPCRS are self-correction, voluntary correction with IRS approval, and correction on audit. The Self-Correction Program ("SCP") generally permits a plan sponsor that has established compliance practices to correct certain insignificant failures at any time (including during an audit), and certain significant failures within a 2–year period, without payment of any fee or sanction. The Voluntary Correction Program ("VCP") program permits an employer, at any time before an audit, to pay a limited fee and receive IRS approval of a correction. For a failure that is discovered on audit and corrected, the Audit Closing Agreement Program ("Audit CAP") provides for a sanction that bears a reasonable relationship to the nature, extent, and severity of the failure and that takes into account the extent to which correction occurred before audit.

The IRS has expressed its intent that EPCRS will be updated and improved periodically in light of experience and comments from those who use it.

REASONS FOR CHANGE

The Committee commends the IRS for the establishment of EPCRS and agrees with the IRS that EPCRS should be updated and improved periodically. The Committee believes that future im-

[58] Rev. Proc. 2001–17, 2001–7 I.R.B. 589.

provements should facilitate use of the compliance and correction programs by small employers and expand the flexibility of the programs.

EXPLANATION OF PROVISION

The Secretary of the Treasury is directed to continue to update and improve EPCRS, giving special attention to (1) increasing the awareness and knowledge of small employers concerning the availability and use of EPCRS, (2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures, (3) extending the duration of the self-correction period under SCP for significant compliance failures, (4) expanding the availability to correct insignificant compliance failures under SCP during audit, and (5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

EFFECTIVE DATE

The provision is effective on the date of enactment.

H. Repeal of the Multiple Use Test

(Sec. 608 of the bill and sec. 401(m) of the Code)

PRESENT LAW

Elective deferrals under a qualified cash or deferred arrangement (“section 401(k) plan”) are subject to a special annual nondiscrimination test (“ADP test”). The ADP test compares the actual deferral percentages (“ADPs”) of the highly compensated employee group and the nonhighly compensated employee group. The ADP for each group generally is the average of the deferral percentages separately calculated for the employees in the group who are eligible to make elective deferrals for all or a portion of the relevant plan year. Each eligible employee’s deferral percentage generally is the employee’s elective deferrals for the year divided by the employee’s compensation for the year.

The plan generally satisfies the ADP test if the ADP of the highly compensated employee group for the current plan year is either (1) not more than 125 percent of the ADP of the nonhighly compensated employee group for the prior plan year, or (2) not more than 200 percent of the ADP of the nonhighly compensated employee group for the prior plan year and not more than 2 percentage points greater than the ADP of the nonhighly compensated employee group for the prior plan year.

Employer matching contributions and after-tax employee contributions under a defined contribution plan also are subject to a special annual nondiscrimination test (“ACP test”). The ACP test compares the actual deferral percentages (“ACPs”) of the highly compensated employee group and the nonhighly compensated employee group. The ACP for each group generally is the average of the contribution percentages separately calculated for the employees in the group who are eligible to make after-tax employee contributions or who are eligible for an allocation of matching contributions for all or a portion of the relevant plan year. Each eligible employee's contribution percentage generally is the employee's aggregate after-tax employee contributions and matching contributions for the year divided by the employee's compensation for the year.

The plan generally satisfies the ACP test if the ACP of the highly compensated employee group for the current plan year is either (1) not more than 125 percent of the ACP of the nonhighly compensated employee group for the prior plan year, or (2) not more than 200 percent of the ACP of the nonhighly compensated employee group for the prior plan year and not more than 2 percentage points greater than the ACP of the nonhighly compensated employee group for the prior plan year.

For any year in which (1) at least one highly compensated employee is eligible to participate in an employer's plan or plans that are subject to both the ADP test and the ACP test, (2) the plan subject to the ADP test satisfies the ADP test but the ADP of the highly compensated employee group exceeds 125 percent of the ADP of the nonhighly compensated employee group, and (3) the plan subject to the ACP test satisfies the ACP test but the ACP of the highly compensated employee group exceeds 125 percent of the ACP of the nonhighly compensated employee group, an additional special nondiscrimination test ("multiple use test") applies to the elective deferrals, employer matching contributions, and after-tax employee contributions. The plan or plans generally satisfy the multiple use test if the sum of the ADP and the ACP of the highly compensated employee group does not exceed the greater of (1) the sum of (A) 1.25 times the greater of the ADP or the ACP of the nonhighly compensated employee group, and (B) 2 percentage points plus (but not more than 2 times) the lesser of the ADP or the ACP of the nonhighly compensated employee group, or (2) the sum of (A) 1.25 times the lesser of the ADP or the ACP of the nonhighly compensated employee group, and (B) 2 percentage points plus (but not more than 2 times) the greater of the ADP or the ACP of the nonhighly compensated employee group.

REASONS FOR CHANGE

The Committee believes that the ADP test and the ACP test are adequate to prevent discrimination in favor of highly compensated employees under 401(k) plans and has determined that the multiple use test unnecessarily complicates 401(k) plan administration.

EXPLANATION OF PROVISION

The provision repeals the multiple use test.

EFFECTIVE DATE

The provision is effective for years beginning after December 31, 2001.

I. Flexibility in Nondiscrimination, Coverage, and Line of Business Rules

(Sec. 609 of the bill and secs. 401(a)(4), 410(b), and 414(r) of the Code)

PRESENT LAW

A plan is not a qualified retirement plan if the contributions or benefits provided under the plan discriminate in favor of highly compensated employees (sec. 401(a)(4)). The applicable Treasury regulations set forth the exclusive rules for determining whether a plan satisfies the nondiscrimination requirement. These regulations state that the form of the plan and the effect of the plan in operation determine whether the plan is nondiscriminatory and that intent is irrelevant.

Similarly, a plan is not a qualified retirement plan if the plan does not benefit a minimum number of employees (sec. 410(b)). A plan satisfies this minimum coverage requirement if and only if it satisfies one of the tests specified in the applicable Treasury regulations. If an employer is treated as operating separate lines of business, the employer may apply the minimum coverage requirements to a plan separately with respect to the employees in each separate line of business (sec. 414(r)). Under a so-called "gateway" requirement, however, the plan must benefit a classification of employees that does not discriminate in favor of highly compensated employees in order for the employer to apply the minimum coverage requirements separately for the employees in each separate line of business. A plan satisfies this gateway requirement only if it satisfies one of the tests specified in the applicable Treasury regulations.

REASONS FOR CHANGE

It has been brought to the attention of the Committee that some plans are unable to satisfy the mechanical tests used to determine compliance with the nondiscrimination and line of business requirements solely as a result of relatively minor plan provisions. The Committee believes that, in such cases, it may be appropriate to expand the consideration of facts and circumstances in the application of the mechanical tests.

EXPLANATION OF PROVISION

The Secretary of the Treasury is directed to modify, on or before December 31, 2003, the existing regulations issued under section 414(r) in order to expand (to the extent that the Secretary may determine to be appropriate) the ability of a plan to demonstrate compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

The Secretary of the Treasury is directed to provide by regulation applicable to years beginning after December 31, 2003, that a plan is deemed to satisfy the nondiscrimination requirements of section 401(a)(4) if the plan satisfies the pre-1994 facts and circumstances test, satisfies the conditions prescribed by the Secretary to appropriately limit the availability of such test, and is submitted to the

Secretary for a determination of whether it satisfies such test (to the extent provided by the Secretary).

Similarly, a plan complies with the minimum coverage requirement of section 410(b) if the plan satisfies the pre–1989 coverage rules, is submitted to the Secretary for a determination of whether it satisfies the pre–1989 coverage rules (to the extent provided by the Secretary), and satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of the pre–1989 coverage rules.

EFFECTIVE DATE

The provision relating to the line of business requirements under section 414(r) is effective on the date of enactment. The provision relating to the nondiscrimination requirements under section 401(a)(4) is effective on the date of enactment, except that any condition of availability prescribed by the Secretary is not effective before the first year beginning not less than 120 days after the date on which such condition is prescribed. The provision relating to the minimum coverage requirements under section 410(b) is effective for years beginning after December 31, 2003, except that any condition of availability prescribed by the Secretary by regulation would not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

J. EXTENSION TO ALL GOVERNMENTAL PLANS OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL GOVERNMENT PLANS

(Sec. 610 of the bill, sec. 1505 of the Taxpayer Relief Act of 1997, and secs. 401(a) and 401(k) of the Code)

PRESENT LAW

A qualified retirement plan maintained by a State or local government is exempt from the rules concerning nondiscrimination (sec. 401(a)(4)) and minimum participation (sec. 401(a)(26)). All other governmental plans are not exempt from the nondiscrimination and minimum participation rules.

REASONS FOR CHANGE

The Committee believes that application of the nondiscrimination and minimum participation rules to governmental plans is unnecessary and inappropriate in light of the unique circumstances under which such plans and organizations operate. Further, the Committee believes that it is appropriate to provide for consistent application of the minimum coverage, nondiscrimination, and minimum participation rules for governmental plans.

EXPLANATION OF PROVISION

The provision exempts all governmental plans (as defined in sec. 414(d)) from the nondiscrimination and minimum participation rules.

EFFECTIVE DATE

The provision is effective for plan years beginning after December 31, 2001.

K. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS

(Sec. 611 of the bill and sec. 417 of the Code)

PRESENT LAW

Notice and consent requirements apply to certain distributions from qualified retirement plans. These requirements relate to the content and timing of information that a plan must provide to a participant prior to a distribution, and to whether the plan must obtain the participant's consent to the distribution. The nature and extent of the notice and consent requirements applicable to a distribution depend upon the value of the participant's vested accrued benefit and whether the joint and survivor annuity requirements (sec. 417) apply to the participant.[59]

If the present value of the participant's vested accrued benefit exceeds $5,000, the plan may not distribute the participant's benefit without the written consent of the participant. The participant's consent to a distribution is not valid unless the participant has received from the plan a notice that contains a written explanation of (1) the material features and the relative values of the optional forms of benefit available under the plan, (2) the participant's right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (3) the rules concerning the taxation of a distribution. If the joint and survivor annuity requirements apply to the participant, this notice also must contain a written explanation of (1) the terms and conditions of the qualified joint and survivor annuity ("QJSA"), (2) the participant's right to make, and the effect of, an election to waive the QJSA, (3) the rights of the participant's spouse with respect to a participant's waiver of the QJSA, and (4) the right to make, and the effect of, a revocation of a waiver of the QJSA. The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.

If the participant's vested accrued benefit does not exceed $5,000, the terms of the plan may provide for distribution without the participant's consent. The plan generally is required, however, to provide to the participant a notice that contains a written explanation of (1) the participant's right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (2) the rules concerning the taxation of a distribution. The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.

REASONS FOR CHANGE

The Committee understands that an employee is not always able to evaluate distribution alternatives, select the most appropriate alternative, and notify the plan of the selection within a 90-day period. The Committee believes that requiring a plan to furnish multiple distribution notices to an employee who does not make a dis-

[59] Similar provisions are contained in title I of ERISA.

tribution election within 90 days is administratively burdensome. In addition, the Committee believes that participants who are entitled to defer distributions should be informed of the impact of a decision not to defer distribution on the taxation and accumulation of their retirement benefits.

EXPLANATION OF PROVISION

A qualified retirement plan is required to provide the applicable distribution notice no less than 30 days and no more than 180 days before the date distribution commences. The Secretary of the Treasury is directed to modify the applicable regulations to reflect the extension of the notice period to 180 days and to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

EFFECTIVE DATE

The provision is effective for years beginning after December 31, 2001.

TITLE VII. OTHER ERISA PROVISIONS

A. Extension of PBGC Missing Participants Program

(Sec. 701 of the bill and secs. 206(f) and 4050 of ERISA)

PRESENT LAW

The plan administrator of a defined benefit pension plan that is subject to Title IV of ERISA, is maintained by a single employer, and terminates under a standard termination is required to distribute the assets of the plan. With respect to a participant whom the plan administrator of a single employer plan cannot locate after a diligent search, the plan administrator satisfies the distribution requirement only by purchasing irrevocable commitments from an insurer to provide all benefit liabilities under the plan or transferring the participant's designated benefit to the Pension Benefit Guaranty Corporation ("PBGC"), which holds the benefit of the missing participant as trustee until the PBGC locates the missing participant and distributes the benefit.

The PBGC missing participant program is not available to multiemployer plans or defined contribution plans and other plans not covered by Title IV of ERISA.

REASONS FOR CHANGE

The Committee recognizes that no statutory provision or formal regulatory guidance exists concerning an appropriate method of handling missing participants in terminated multiemployer plans or defined contribution plans and other plans not subject to the PBGC termination insurance program. Therefore, sponsors of these plans face uncertainty with respect to missing participants. The Committee believes that it is appropriate to extend the established PBGC missing participant program to these plans in order to reduce uncertainty for plan sponsors and increase the likelihood that missing participants will receive their retirement benefits.

EXPLANATION OF PROVISION

The PBGC is directed to prescribe for terminating multiemployer plans rules similar to the present-law missing participant rules applicable to terminating single-employer plans that are subject to Title IV of ERISA.

In addition, plan administrators of certain types of plans not subject to the PBGC termination insurance program under present law are permitted, but not required, to elect to transfer missing participants' benefits to the PBGC upon plan termination. Specifically, the provision extends the missing participants program to defined contribution plans, defined benefit plans that have no more than 25 active participants and are maintained by professional service employers, and the portion of defined benefit plans that provide benefits based upon the separate accounts of participants and therefore are treated as defined contribution plans under ERISA.

EFFECTIVE DATE

The provision is effective for distributions from terminating plans that occur after the PBGC has adopted final regulations implementing the provision.

B. Reduce PBGC Premiums for Small and New Plans

(Secs. 702 and 703 of the bill and sec. 4006 of ERISA)

PRESENT LAW

Under present law, the Pension Benefit Guaranty Corporation ("PBGC") provides insurance protection for participants and beneficiaries under certain defined benefit pension plans by guaranteeing certain basic benefits under the plan in the event the plan is terminated with insufficient assets to pay benefits promised under the plan. The guaranteed benefits are funded in part by premium payments from employers who sponsor defined benefit plans. The amount of the required annual PBGC premium for a single-employer plan is generally a flat rate premium of $19 per participant and an additional variable-rate premium based on a charge of $9 per $1,000 of unfunded vested benefits. Unfunded vested benefits under a plan generally means (1) the unfunded current liability for vested benefits under the plan, over (2) the value of the plan's assets, reduced by any credit balance in the funding standard account. No variable-rate premium is imposed for a year if contributions to the plan were at least equal to the full funding limit.

The PBGC guarantee is phased in ratably in the case of plans that have been in effect for less than 5 years, and with respect to benefit increases from a plan amendment that was in effect for less than 5 years before termination of the plan.

REASONS FOR CHANGE

The Committee believes that reducing the PBGC premiums for new plans and small plans will help encourage the establishment of defined benefit pension plans, particularly by small employers.

EXPLANATION OF PROVISION

Reduced flat-rate premiums for new plans of small employers

Under the provision, for the first five plan years of a new single-employer plan of a small employer, the flat-rate PBGC premium is $5 per plan participant.

A small employer is a contributing sponsor that, on the first day of the plan year, has 100 or fewer employees. For this purpose, all employees of the members of the controlled group of the contributing sponsor are taken into account. In the case of a plan to which more than one unrelated contributing sponsor contributes, employees of all contributing sponsors (and their controlled group members) are taken into account in determining whether the plan is a plan of a small employer.

A new plan means a defined benefit plan maintained by a contributing sponsor if, during the 36-month period ending on the date of adoption of the plan, such contributing sponsor (or controlled group member or a predecessor of either) has not established or maintained a plan subject to PBGC coverage with respect to which benefits were accrued for substantially the same employees as are in the new plan.

Reduced variable-rate PBGC premium for new plans

The provision provides that the variable-rate premium is phased in for new defined benefit plans over a six-year period starting with the plan's first plan year. The amount of the variable-rate premium is a percentage of the variable premium otherwise due, as follows: 0 percent of the otherwise applicable variable-rate premium in the first plan year; 20 percent in the second plan year; 40 percent in the third plan year; 60 percent in the fourth plan year; 80 percent in the fifth plan year; and 100 percent in the sixth plan year (and thereafter).

A new defined benefit plan is defined as described above under the flat-rate premium provision relating to new small employer plans.

Reduced variable-rate PBGC premium for small plans

In the case of a plan of a small employer, the variable-rate premium is no more than $5 multiplied by the number of plan participants in the plan at the end of the preceding plan year. For purposes of the provision, a small employer is a contributing sponsor that, on the first day of the plan year, has 25 or fewer employees. For this purpose, all employees of the members of the controlled group of the contributing sponsor are taken into account. In the case of a plan to which more than one unrelated contributing sponsor contributes, employees of all contributing sponsors (and their controlled group members) are taken into account in determining whether the plan is a plan of a small employer.

EFFECTIVE DATE

The reduction of the flat-rate premium for new plans of small employers and the reduction of the variable-rate premium for new plans is effective with respect to plans established after December 31, 2001. The reduction of the variable-rate premium for small plans is effective with respect to plan years beginning after December 31, 2001.

C. Authorization for PBGC to Pay Interest on Premium Overpayment Refunds

(Sec. 704 of the bill and sec. 4007(b) of ERISA)

PRESENT LAW

The PBGC charges interest on underpayments of premiums, but is not authorized to pay interest on overpayments.

REASONS FOR CHANGE

The Committee believes that an employer or other person who overpays PBGC premiums should receive interest on a refund of the overpayment.

EXPLANATION OF PROVISION

The provision would allow the PBGC to pay interest on overpayments made by premium payors. Interest paid on overpayments is calculated at the same rate and in the same manner as interest is charged on premium underpayments.

EFFECTIVE DATE

The provision is effective with respect to interest accruing for periods beginning not earlier than the date of enactment.

D. Rules for Substantial Owner Benefits in Terminated Plans

(Sec. 705 of the bill and secs. 4021, 4022, 4043 and 4044 of ERISA)

PRESENT LAW

Under present law, the Pension Benefit Guaranty Corporation ("PBGC") provides participants and beneficiaries in a defined benefit pension plan with certain minimal guarantees as to the receipt of benefits under the plan in case of plan termination. The employer sponsoring the defined benefit pension plan is required to pay premiums to the PBGC to provide insurance for the guaranteed benefits. In general, the PBGC will guarantee all basic benefits which are payable in periodic installments for the life (or lives) of the participant and his or her beneficiaries and are non-forfeitable at the time of plan termination. The amount of the guaranteed benefit is subject to certain limitations. One limitation is that the plan (or an amendment to the plan which increases benefits) must be in effect for 60 months before termination for the PBGC to guarantee the full amount of basic benefits for a plan participant, other than a substantial owner. In the case of a substantial owner, the guaranteed basic benefit is phased in over 30 years beginning with participation in the plan. A substantial owner is one who owns, directly or indirectly, more than 10 percent of the voting stock of a corporation or all the stock of a corporation. Special rules restricting the amount of benefit guaranteed and the allocation of assets also apply to substantial owners.

REASONS FOR CHANGE

The Committee believes that the present-law rules concerning limitations on guaranteed benefits for substantial owners are overly complicated and restrictive and thus may discourage some small business owners from establishing defined benefit pension plans.

EXPLANATION OF PROVISION

The provision provides that the 60–month phase-in of guaranteed benefits would apply to a substantial owner with less than 50 percent ownership interest. For a substantial owner with a 50 percent or more ownership interest ("majority owner"), the phase-in occurs over a 10–year period and depends on the number of years the plan has been in effect. The majority owner's guaranteed benefit is limited so that it could not be more than the amount phased in over 60 months for other participants. The rules regarding allocation of assets would apply to substantial owners, other than majority owners, in the same manner as other participants.

EFFECTIVE DATE

The provision is effective for plan terminations with respect to which notices of intent to terminate are provided, or for which proceedings for termination are instituted by the PBGC, after December 31, 2001.

TITLE VIII. PROVISIONS RELATING TO PLAN AMENDMENTS

(Sec. 801 of the bill)

PRESENT LAW

Plan amendments to reflect amendments to the law generally must be made by the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law occurs.

REASONS FOR CHANGE

The Committee believes that employers should have adequate time to amend their plans to reflect amendments to the law while operating their plans in compliance with such amendments.

EXPLANATION OF PROVISION

The provision permits certain plan amendments made pursuant to the changes made by the bill (or regulations issued under the provisions of the bill) to be retroactively effective. If the plan amendment meets the requirements of the bill, then the plan is treated as being operated in accordance with its terms and the amendment does not violate the prohibition of reductions of accrued benefits. In order for this treatment to apply, the plan amendment must be made on or before the last day of the first plan year beginning on or after January 1, 2004 (January 1, 2006, in the case of a governmental plan). If the amendment is required to be made to retain qualified status as a result of the changes in the bill (or regulations) the amendment must be made retroactively effective as of the date on which the change became effective with respect to the plan and the plan must be operated in compliance until the amendment is made. Amendments that are not required to retain qualified status but that are made pursuant to the changes made by the bill (or applicable regulations) may be made retroactive as of the first day the plan was operated in accordance with the amendment.

A plan amendment is not considered to be pursuant to the bill (or applicable regulations) if it has an effective date before the effective date of the provision of the bill (or regulations) to which it relates. Similarly, the provision does not provide relief from section 411(d)(6) for periods prior to the effective date of the relevant provision of the bill (or regulations) or the plan amendment.

The Secretary is authorized to provide exceptions to the relief from the prohibition on reductions in accrued benefits. It is intended that the Secretary will not permit inappropriate reductions in contributions or benefits that are not directly related to the provisions of the bill. For example, it is intended that a plan that incorporates the section 415 limits by reference could be retroactively amended to impose the section 415 limits in effect before the bill. On the other hand, suppose a plan that incorporates the section 401(a)(17) limit on compensation by reference provides for an employer contribution of 3 percent of compensation. It is expected that the Secretary would provide that the plan could not be amended retroactively to reduce the contribution percentage for those participants not affected by the section 401(a)(17) limit, even though the reduction will result in the same dollar level of contributions for some participants because of the increase in compensation taken into account under the plan. As another example, suppose that under present law a plan is top-heavy and therefore a minimum benefit is required under the plan, and that under the provisions of the bill, the plan would not be considered to be top heavy. It is expected that the Secretary would generally permit plans to be retroactively amended to reflect the new top-heavy provisions of the bill.

EFFECTIVE DATE

The provision is effective on the date of enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 10.

MOTION TO REPORT THE BILL

The bill, H.R. 10, as amended, was ordered favorably reported by a roll call vote of 35 yeas to 6 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Representatives	Yea	Nay
Mr. Thomas	X	....	Mr. Rangel	....	X
Mr. Crane	X	....	Mr. Stark	....	X
Mr. Shaw	X	....	Mr. Matsui	....	X
Mrs. Johnson.	X	....	Mr. Coyne	X	....
Mr. Houghton	X	....	Mr. Levin	X	....
Mr. Herger	X	....	Mr. Cardin	X	....

Representatives	Yea	Nay	Representatives	Yea	Nay
Mr. McCrery	X		Mr. McDermott		X
Mr. Camp	X		Mr. Kleczka	X	
Mr. Ramstad	X		Mr. Lewis (GA)	X	
Mr. Nussle	X		Mr. Neal		X
Mr. Johnson	X		Mr. McNulty	X	
Ms. Dunn	X		Mr. Jefferson	X	
Mr. Collins	X		Mr. Tanner	X	
Mr. Portman	X		Mr. Becerra		X
Mr. English	X		Mrs. Thurman	X	
Mr. Watkins	X		Mr. Doggett	X	
Mr. Hayworth	X		Mr. Pomeroy	X	
Mr. Weller	X				
Mr. Hulshof	X				
Mr. McInnis	X				
Mr. Lewis (KY)	X				
Mr. Foley	X				
Mr. Brady	X				
Mr. Ryan	X				

VOTES ON AMENDMENTS

A roll call vote was conducted on the following amendment to the Chairman's amendment in the nature of a substitute.

An amendment by Mr. Shaw to provide that for purposes of section 410(b) of the Code, compensation for services performed in the United States by nonresident alien individuals temporarily present in the United States as a crew member for a foreign vessel shall not be deemed to be United States source income, was agreed to by a roll call vote of 27 yeas to 12 nays. The vote was as follows:

Representatives	Yea	Nay	Representatives	Yea	Nay
Mr. Thomas	X		Mr. Rangel	X	
Mr. Crane	X		Mr. Stark		X
Mr. Shaw	X		Mr. Matsui		X
Mrs. Johnson	X		Mr. Coyne		X
Mr. Houghton	X		Mr. Levin		X
Mr. Herger	X		Mr. Cardin		X
Mr. McCrery	X		Mr. McDermott		
Mr. Camp	X		Mr. Kleczka		X
Mr. Ramstad	X		Mr. Lewis (GA)		
Mr. Nussle	X		Mr. Neal		X
Mr. Johnson	X		Mr. McNulty		X
Ms. Dunn	X		Mr. Jefferson	X	
Mr. Collins	X		Mr. Tanner	X	
Mr. Portman	X		Mr. Becerra		X
Mr. English	X		Mrs. Thurman		X
Mr. Watkins	X		Mr. Doggett		X
Mr. Hayworth	X		Mr. Pomeroy		X
Mr. Weller	X				
Mr. Hulshof	X				
Mr. McInnis	X				
Mr. Lewis (KY)	X				
Mr. Foley	X				
Mr. Brady	X				
Mr. Ryan	X				

An amendment by Mr. Neal to add to the bill a refundable tax credit to low-and middle-income workers of up to 50 percent of annual contributions made to a traditional (deductible) Individual Retirement Account or an employer-sponsored pension plan such as a section 401(k), 403(b), or 457 plan, was defeated by a roll call vote of 15 yeas to 24 nays. The vote was as follows:

Representatives	Yea	Nay	Representatives	Yea	Nay
Mr. Thomas		X	Mr. Rangel	X	
Mr. Crane		X	Mr. Stark	X	
Mr. Shaw		X	Mr. Matsui	X	
Mrs. Johnson		X	Mr. Coyne	X	
Mr. Houghton		X	Mr. Levin	X	
Mr. Herger		X	Mr. Cardin	X	
Mr. McCrery		X	Mr. McDermott	X	
Mr. Camp		X	Mr. Kleczka	X	
Mr. Ramstad		X	Mr. Lewis (GA)		
Mr. Nussle		X	Mr. Neal	X	
Mr. Johnson		X	Mr. McNulty	X	
Ms. Dunn		X	Mr. Jefferson	X	
Mr. Collins		X	Mr. Tanner		
Mr. Portman		X	Mr. Becerra	X	
Mr. English		X	Mrs. Thurman	X	
Mr. Watkins		X	Mr. Doggett	X	
Mr. Hayworth		X	Mr. Pomeroy	X	
Mr. Weller		X			
Mr. Hulshof		X			
Mr. McInnis		X			
Mr. Lewis (KY)		X			
Mr. Foley		X			
Mr. Brady		X			
Mr. Ryan		X			

An amendment by Mr. Neal to add to the bill two tax credits for small employers: (1) a tax credit for expenses of starting new pension plans, and (2) a tax credit for employer contributions to a pension plan, was defeated by a roll call vote of 16 yeas to 24 nays. The vote was as follows:

Representatives	Yea	Nay	Representatives	Yea	Nay
Mr. Thomas		X	Mr. Rangel	X	
Mr. Crane		X	Mr. Stark	X	
Mr. Shaw		X	Mr. Matsui	X	
Mrs. Johnson		X	Mr. Coyne	X	
Mr. Houghton		X	Mr. Levin	X	
Mr. Herger		X	Mr. Cardin	X	
Mr. McCrery		X	Mr. McDermott	X	
Mr. Camp		X	Mr. Kleczka	X	
Mr. Ramstad		X	Mr. Lewis (GA)	X	
Mr. Nussle		X	Mr. Neal	X	
Mr. Johnson		X	Mr. McNulty	X	
Ms. Dunn		X	Mr. Jefferson	X	
Mr. Collins		X	Mr. Tanner		
Mr. Portman		X	Mr. Becerra	X	
Mr. English		X	Mrs. Thurman	X	
Mr. Watkins		X	Mr. Doggett	X	
Mr. Hayworth		X	Mr. Pomeroy	X	
Mr. Weller		X			
Mr. Hulshof		X			
Mr. McInnis		X			
Mr. Lewis (KY)		X			
Mr. Foley		X			
Mr. Brady		X			
Mr. Ryan		X			

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 10 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2002–2006:

ESTIMATED REVENUE EFFECTS OF H.R. 10, THE ''COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001,'' AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS

[Fiscal years 2002–2006, in millions of dollars]

Provision	Effective	2002	2003	2004	2005	2006	2002–06
Individual Retirement Arrangement Provisions							
1. Modification of IRA Contribution Limits—increase the maximum contribution limit for traditional and Roth IRAs to: $3,000 in 2002, $4,000 in 2003, $5,000 in 2004, and index for inflation thereafter	tyba 12/31/01	−368	−1,203	−2,059	−2,762	−3,311	−9,703
2. IRA Catch-Up Contributions—increase maximum contribution limits for traditional and Roth IRAs for individuals age 50 and above to $5,000 in 2002 and 2003	tyba 12/31/01	−193	−294	−126	−48	−48	−710
Total of Individuals Retirement Arrangement Provisions	....	−561	−1,497	−2,185	−2,810	−3,359	−10,413
Provisions of Expanding Coverage							
1. Increase contribution and benefit limits:							
a. Increase limitation on exclusion for elective deferrals to: $11,000 in 2002, $12,000 in 2003, $13,000 in 2004, $14,000 in 2005, and $15,000 in 2006; index thereafter [1 2]	yba 12/31/01	....	−100	−328	−500	−636	−1,564
b. Increase limitation in SIMPLE elective contributions to: $7,000 in 2002, $8,000 in 2003, $9,000 in 2004, $10,000 in 2005, index thereafter [1 2]	yba 12/31/01	−10	−30	−42	−51	−55	−188
c. Increase defined benefit dollar limit to $160,000	yba 12/31/01	−23	−42	−46	−47	−48	−207
d. Lower early retirement age to 62; lower normal retirement age to 65	yba 12/31/01	−3	−4	−4	−5	−5	−21
e. Increase annual addition limitation for defined contribution plans to $40,000 with indexing in $1,000 increments [1]	yba 12/31/01	−7	−15	−19	−21	−17	−79
f. Increase qualified plan compensation limit to $200,000 with indexing in $5,000 increments [1]	yba 12/31/01	−54	−117	−121	−138	−135	−565
g. Increase limits on deferrals under deferred compensation plans of State and local governments and tax-exempt organizations to: $11,000 in 2002, $12,000 in 2003, $13,000 in 2004, $14,000 in 2005, and $15,000 in 2006; index thereafter [1 2]	yba 12/31/01	−29	−61	−87	−108	−127	−411
2. Plan loans for subchapter S owners, partners, and sole proprietors	lma 12/31/01	−21	−32	−34	−36	−39	−162
3. Modification of top-heavy rules	yba 12/31/01	−4	−9	−11	−13	−14	−51
4. Elective deferrals not taken into account for purposes of deduction limits	yba 12/31/01	−47	−88	−103	−111	−119	−468
5. Repeal of coordination requirements for deferred compensation plans of State and local governments and tax-exempt organizations	yba 12/31/01	−16	−27	−27	−25	−23	−118
6. elimination of user fee for certain requests regarding small employer pension plans; waiver applies only for request made during first 5 plan years [3]	rma 12/31/01	−5	−8	....	....	....	−13
7. Definition of compensation for purposes of deduction limits [1]	yba 12/31/01	−1	−3	−3	−3	−3	−14
8. Option to treat elective deferrals as after-tax contributions	tyba 12/31/01	42	105	148	132	88	516
9. Increase stock bonus and profit sharing plan deduction limit from 15% to 20% [1]	tyba 12/31/01	−5	−10	−12	−13	−15	−56

10. Availability of qualified plans to self-employed individuals who are exempt from the self-employment tax by reason of their religious beliefs	tyba 12/31/01	−1	−2	−4	−5	−6	−18
Total of Provisions for Expanding Coverage		−184	−443	−693	−944	−1,154	−3,419
Provisions for Enhancing Fairness for Women							
1. Additional catch-up contributions for individuals age 50 and above—increase the otherwise applicable contribution limit by $5,000 in 2002 through 2006 and index for inflation thereafter	tyba 12/31/01	−241	−320	−239	−155	−96	−1,052
2. Equitable treatment for contributions of employees to defined contribution plans [1]	yba 12/31/01	−45	−84	−98	−106	−113	−446
3. Faster vesting of certain employer matching contributions	pyba 12/31/01	Negligible Revenue Effect					
4. Simplify and update the minimum distribution rules by modifying post-death distribution rules, reducing (to 10%) the excise tax on failures to make minimum distributions, and directing the Treasury to revise regulations relating to the minimum distribution rules to reflect current life expectancy	yba 12/31/01	−49	−116	−136	−153	−176	−630
5. Clarification of Tax treatment of division of section 457 plan benefits upon divorce	tdapma 12/31/01	Negligible Revenue Effect					
6. Modification of safe harbor relief for hardship withdrawals from 401(k) plans	yba 12/31/01	Negligible Revenue Effect					
7. Waiver of tax on nondeductible contributions for domestic or similar workers	tyba 12/31/01	(7)	(7)	−1	−2	−4	−8
Total of Provisions for Enhancing Fairness for Women		−335	−520	−474	−416	−389	−2,136
Provisions for Increasing Portability for Participants							
1. Rollovers allowed among governmental section 457 plans, section 403(b) plans, and qualified plans	da 12/31/01	27	−4	−4	−5	−5	10
2. Rollovers of IRAs to workplace retirement plans	da 12/31/01	Negligible Revenue Effect					
3. Rollovers of after-tax retirement plan contributions	dma 12/31/01	Negligible Revenue Effect					
4. Waiver of 60-day rule	da 12/31/01	Negligible Revenue Effect					
5. Treatment of forms of qualified plan distributions	yba 12/31/01	Negligible Revenue Effect					
6. Rationalization of restrictions on distributions	da 12/31/01	Negligible Revenue Effect					
7. Purchase of service credit in governmental defined benefit plans	ta 12/31/01	Negligible Revenue Effect					
8. Employers may disregard rollovers for cash-out amounts	da 12/31/01	Negligible Revenue Effect					
9. Minimum distribution and inclusion requirements for section 457 plans	da 12/31/01	Considered in Other Provisions					
Total of Provisions for Increasing Portability for Participants		27	−4	−4	−5	−5	10
Provisions for Strengthening Pension Security and Enforcement							
1. Phase-in repeal of 160% of current liability funding limit; extend maximum deduction rule	pyba 12/31/01	−3	−3	−22	−36	−38	−102
2. Excise tax relief for sound pension funding	yba 12/31/01	−2	−3	−3	−3	−3	−14
3. Notice of significant reduction in plan benefit accruals	pateo/a DOE	Negligible Revenue Effect					
4. Repeal 100% of compensation limit for multiemployer plans	yba 12/31/01	−2	−4	−4	−4	−4	−18
5. Modification of section 415 aggregation rules for multi-employer plans	tyba 12/31/01	−1	−1	−1	−1	−1	−4

ESTIMATED REVENUE EFFECTS OF H.R. 10, THE "COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001," AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS—Continued

[Fiscal years 2002–2006, in millions of dollars]

Provision	Effective	2002	2003	2004	2005	2006	2002–06
6. Prohibited allocations of stock in an ESOP of a subchapter S corporation	(4)	3	5	6	8	8	30
Total of Provisions for Strengthening Pension Security and Enforcement		−5	−6	−24	−36	−38	−108
Provisions for Reducing Regulatory Burdens							
1. Modification of timing of plan valuations	pyba 12/31/01			Negligible Revenue Effect			
2. ESOP dividends may be reinvested without loss of dividend deduction	tyba 12/31/01	−20	−49	−59	−63	−66	−258
3. Repeal transition rule relating to certain highly compensated employees	pyba 12/31/01	−2	−3	−3	−3	−3	−14
4. Employees of tax-exempt entities [5]	DOE			Negligible Revenue Effect			
5. Treatment of employer-provided retirement advice	yba 12/31/01			Negligible Revenue Effect			
6. Pension plan reporting simplification [5]	1/1/01			Negligible Revenue Effect			
7. Improvement to Employee Plans Compliance Resolution System [5]	DOE			Negligible Revenue Effect			
8. Repeal of multiple use test	yba 12/31/01			Considered in Other Provisions			
9 Flexibility in nondiscrimination, coverage, and line of business rules [5]	DOE			Negligible Revenue Effect			
10. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local government plans	yba 12/31/01			Negligible Revenue Effect			
11. Notice and consent period regarding distributions	yba 12/31/01			No Revenue Effect			
12. Certain nonresident aliens excluded in applying minimum coverage requirements	tyba 12/31/01	−3	−5	−5	−5	−6	−24
Total of Provisions for Reducing Regulatory Burdens		−25	−57	−67	−71	−75	−296
Provisions Relating to Plan Amendments	DOE			No Revenue Effect			
ERISA Provisions							
1. Missing plan participants [3]	(6)		(7)	(7)	(7)	(7)	(7)
2. Reduce PBGC premium for new plans of small employers [3]	pea 12/31/01		(7)	(7)	(7)	(7)	−2
3. Phase-in of additional PBGC premium for new plans; include additional variable premium relief for small employers [3]	pea 12/31/01		−9	−9	−9	−9	−35
4. Authorization for PBGC to pay interest on premium overpayment refunds [3]	iafpbnet DOE	−3	−3	−3	−3	−3	−15
5. Rules for substantial owner benefits in terminated plans [3]	noitta 12/31/01	(7)	(7)	(7)	(7)	(7)	−2
Total of ERISA provisions		−3	−13	−13	−13	−13	−54

Net Total		−1,086	−2,540	−3,460	−4,295	−5,033	−16,416

[1] Provision includes interaction with other provisions in Provisions for Expanding Coverage.

[2] Provision includes interaction with the Individual Retirement Arrangement Provisions.

[3] Estimate provided by the Congressional Budget Office.

[4] Generally effective with respect to years beginning after December 31, 2004. In the case of an ESOP established after March 14, 2001, or an ESOP established on or before such date if the employer maintaining the plan was not an S corporation on such date, the proposal would be effective with respect to plan years ending after March 14, 2001.

[5] Directs the Secretary of the Treasury to modify rules through regulations.

[6] Effective for distributions from terminating plans that occur after PBGC has adopted final regulations implementing provision.

[7] Loss of less than $500,000.

Legend for ''Effective'' column: da=distributions after; dma=distributions made after; DOE=date of enactment; iafpbnet=interest accruing for periods beginning not earlier than; lma=loans made after; noitia=notice of intent to terminate after; pateo/a=plan amendments taking effect on or after; pea=plans established afer; pyba=plan years beginning after; rma=requests made after; ta=transfers after; tdapma=transfers, distributions, and payments made after; tyba=taxable years beginning after; and yba=years beginning after.

Note.—Details may not add to totals due to rounding.

Source: Joint Committee on Taxation.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

Budget authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority.

Tax expenditures

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the revenue-reducing income tax provisions involve increased tax expenditures, and the revenue-increasing income tax provisions involve reduced tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office (CBO), the following statement by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 1, 2001.

Hon. William "Bill" M. Thomas,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 10, the Comprehensive Retirement Security and Pension Reform Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Erin Whitaker.

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosure.

H.R. 10—Comprehensive Retirement Security and Pension Reform Act of 2001

Summary

H.R. 10 would make numerous changes to the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act of 1974 (ERISA) that would affect the taxation and operation of private pension plans.

CBO and the Joint Committee on Taxation (JCT) estimate that the bill would reduce federal revenues by $1.1 billion in 2002, by $16.4 billion over the 2002–2006 period, and by $51.7 billion over the 2002–2011 period. CBO estimates that the bill would increase direct spending by $2 million in 2002, by $49 million over the 2002–2006 period, and by $112 million over the 2002–2011 period. Since this bill would affect direct spending and revenues, pay-as-you-go procedures would apply.

JCT and CBO have determined that H.R. 10 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. The bill contains one new private-sector mandate. JCT has determined that the cost of this mandate would not exceed the threshold established by UMRA for private-sector mandates ($113 million in fiscal year 2001, adjusted annually for inflation).

Estimated cost to the Federal Government

The estimated budgetary impact of H.R. 10 is shown in the following table. The costs of this legislation would fall within budget functions 600 (income security) and 800 (general government).

	By fiscal year, in millions of dollars—					
	2001	2002	2003	2004	2005	2006
CHANGES IN REVENUES						
Modification of IRA Contribution Limits	0	−368	−1,203	−2,059	−2,762	−3,311
Increased Limitation on Exclusion for Elective Deferrals	0	−100	−328	−500	−636	−708
Additional Increased Limitation on Exclusion for Elective Deferrals for Individuals Age 50 and Above	0	−241	−320	−239	−155	−96
Other Estimated Revenues	0	−385	−700	−663	−743	−919
Total Revenues	0	−1,094	−2,551	−3,461	−4,296	−5,034
CHANGES IN DIRECT SPENDING						
IRS User Fees	0	−1	−1	[1]	0	0
Reduced PBGC Flat-Rate Premiums	0	0	[1]	[1]	0	0
Reduced PBGC Variable Premiums	0	0	9	9	9	9
Missing Participants in Terminated Plans	0	0	[1]	[1]	[1]	[1]
Payment of Interest on PBGC Premium Overpayment	0	3	3	3	3	3
Benefits Paid to Substantial Owners	0	0	[1]	[1]	[1]	[1]
Total Direct Spending	0	2	11	12	12	12
TOTAL CHANGES						
Net Decrease in Budget Surplus	0	−1,096	−2,562	−3,473	−4,308	−5,046

[1] = Less than $500,000.

Notes: Components may not sum to totals because of rounding.

Sources: CBO and Joint Committee on Taxation.

Basis of estimate

Revenues

Federal Tax Revenues.—JCT estimates that H.R. 10 would reduce federal tax revenues by $1.1 billion in 2002, by $16.4 billion over the 2002–2006 period, and by $51.7 billion over the 2002–2011 period. The bill would increase the maximum contribution limit for Individual Retirement Accounts (IRAs) to $3,000 in 2002, $4,000 in 2003, and $5,000 in 2004. After 2004, the maximum contribution rate would be indexed for inflation. The bill also would increase the maximum IRA contribution to $5,000 for individuals aged 50 or older in 2002 and 2003. In addition, the bill would make numerous changes to pension laws. For 2002, it would increase to $11,000 the dollar limit on certain contributions made to qualified plans ("elective deferrals") under section 401(k) plans, section 403(b) annuities, and simplified employee pension plans (SEPs). That limitation would increase further, in $1,000 annual increments, until it reaches $15,000 in 2005. After 2005, the dollar limit would be indexed for inflation. The bill also would increase the otherwise applicable dollar limit on elective deferrals by $5,000 for individuals aged 5 or older in 2002 through 2006. After 2006, the dollar limit would be indexed for inflation.

IRS User Fees.—H.R. 10 would eliminate the fee that the IRS charges small businesses for providing ruling, opinion, and determination letters regarding the firms' pension plans if certain conditions are met. This provision would take effect after December 31, 2001. Based on the amount of fees collected in recent years and on information from the IRS. CBO estimates that eliminating the fee would decrease governmental receipts by the total of $17 million over fiscal years 2002 and 2003. Under current law, the IRS's authority to charge such fees will expire at the end of fiscal year 2003, so the provision would have no impact on receipts beyond that year.

Department of Labor Civil Penalties.—Under current law, the Department of Labor (DoL) is responsible for administering ERISA's reporting, disclosure, and fiduciary conduct requirements for private pension plans. In cases of fiduciary misconduct, DoL is required to assess a civil penalty equal to 20 percent of any amount that is restored to a pension plan as part of a settlement or court judgment. These penalties, which totaled $3 million in 1998, are recorded as miscellaneous receipts.

The bill would allow DoL to assess these civil penalties at its discretion and to assess penalties that could be less than 20 percent of the recovered amount. With this more flexible authority, DoL has indicated that it would no longer assess penalties in cases where companies comply voluntarily with the department's enforcement efforts. According to DoL, these cases comprise about a third of the total. The full 20-percent penalty would still be assessed in the remaining cases, which are typically resolved through litigation. CBO estimates that this provision would reduce penalties collected by about a third, and that the drop in penalties would total $5 million over the 2002–2006 period.

Spending subject to appropriation

H.R. 10 would amend ERISA to require the President to convene an additional conference on national savings in 2009. Under current law, the President is required to convene a National Summit on Retirement Income Security in 2001 and 2005. The appropriation of such sums as may be necessary is authorized for that purpose. The Secretary of Labor is also authorized to accept private donations to defray the costs of the conference. Based upon the experience of the 1998 National Summit, CBO estimates that the 2009 National Summit would cost less than $1 million and that more than one-half of the expenses would be offset by private donations. (See the discussion under direct spending for more details.)

Direct spending

National Summit on Retirement Income Security.—The bill would extend the authorization for the National Summit on Retirement Income Security to include a meeting in 2009. CBO estimates that the Department of Labor would receive at least $500,000 in private donations which would be spent to defray part of the costs of the conference. Therefore, this provision would increase revenues and direct spending by the same amounts and would have no net impact on the budget surplus.

IRS User Fees.—The Internal Revenue Service (IRS) has the authority to retain and spend without further appropriation action a small portion of the fees it collects from taxpayers for certain rulings and determinations by the Office of the Chief Counsel and by the Office for Employee Plans and Exempt Organizations. Because H.R. 10 would eliminate the fee paid by small businesses for rulings and determinations, the bill would also reduce the amounts available for the IRS to spend. These fees are recorded in the budget as revenues, and are scheduled to expire in 2003. CBO estimates that eliminating the fee would decrease direct spending by a total of $2 million over the 2002–2004 period.

Reduced Flat-Rate Premiums Paid to the PBGC.—Under current law, defined benefit pension plans operated by a single employer pay two types of annual premiums to the Pension Benefit Guaranty Corporation (PBGC). All covered plans are subject to a flat-rate premium of $19 per participant. In addition, underfunded plans must also pay a variable premium that depends on the amount by which the plan's liabilities exceed its assets.

The bill would reduce the flat-rate premium from $19 to $5 per participant for plans established by employers with 100 or fewer employees during the first five years of the plan's operation. According to information obtained from the PBGC, approximately 3,000 plans would qualify for this reduction. Those plans cover an average of about 10 participants each. CBO estimates that the change would reduce PBGC's premium income, which is classified as an offsetting collection, by about $400,000 annually beginning in 2003 and by about $1.7 million over the 2003–2006 period.

Reduced Variable Premiums Paid to the PBGC.—H.R. 10 would make two changes affecting the variable-rate premium paid by underfunded plans. First, for all new plans that are underfunded, the bill would phase in the variable-rate premium. In the first year, plans would pay nothing. In the succeeding four years, they would pay 20 percent, 40 percent, 60 percent, and 80 percent, respectively, of the full amount. In the sixth and later years, they would pay the full variable-rate premium determined by their funding status. On the basis of information about premiums paid to the PBGC in 1998 and 1999, CBO estimates that this change would affect the premiums of approximately 400 plans per year. It would reduce PBGC's total premium receipts by about $28 million over the 2003–2006 period.

The bill would also reduce the variable-rate premium paid by all underfunded plans (not just new plans) established by employers with 25 or fewer employees. Under the bill, the variable-rate premium per participant paid by those plans would not exceed $5 multiplied by the number of participants in the plan. CBO estimates that approximately 8,300 plans would have their premium payments to PBGC reduced by this provision beginning in 2003. As a result, premium receipts would decline by $1.6 million in 2003 and by $7 million over the 2003–2006 period.

Missing Participants in Terminated Pension Plans.—The legislation would expand the PBGC's missing participant program. The Retirement Protection Act of 1994 established a program to locate missing participants when defined benefit plans are terminated.

The bill would expand the program to include terminating multi-employer plans, defined benefit plans not covered by the PBGC, and defined contribution plans.

The budgetary impact of this provision would be less than $500,000 annually. The PBGC does not expect a high volume of missing participants as a result of this proposal, and the administrative costs of expanding the program would not be significant. The net budgetary effect of increased benefit payments would also be small. Amounts paid by a pension plan to the PBGC for missing participants are held in the PBGC's trust fund, which is not part of the federal budget. Amounts paid by the PBGC to participants at the time they are located are funded in the same manner as benefit payments to participants in plans for which PBGC is the trustee—partially by the trust fund and partially by on-budget revolving funds.

Authorization for PBGC to Pay Interest on Premium Overpayment Refunds.—The legislation would authorize the PBGC to pay interest to plan sponsors on premium overpayments. Interest paid on overpayments would be calculated at the same time rate as interest changed on premium underpayments. On average, PBGC receives $19 million per year in premium overpayments, charges an interest rate of 8 percent for underpayments, and allows for a two-year lag between the receipt of payments and the issuance of refunds. The agency would pay the same rate for premium overpayments as it charges for underpayments. Based on this information, CBO estimates that direct spending would increase by $3 million annually.

Substantial Owner Benefits in Terminated Plans.—H.R. 10 would simplify the rules by which the PBGC pays benefits to substantial owners (those with an ownership interest of at least 10 percent) of terminated pension plans. Only about one-third of the plans taken over by the PBGC involve substantial owners, and the change in benefits paid to owner-employees under this provision would be less than $500,00 annually.

Pay-as-you-go considerations

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in receipts ...	0	−1,094	−2,551	−3,461	−4,296	−5,034	−5,664	−6,287	−7,005	−7,799	−8,496
Changes in outlays	0	2	11	12	12	12	12	12	13	13	13

Estimated impact on State, local, and tribal governments: JCT has determined that H.R. 10 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: JCT has determined the provision that would prohibit allocations of stock in an Employee Stock Ownership Plan of a subchapter S corporation would be a new private sector mandate. JCT has estimated that the cost of this mandate would not exceed the threshold established by UMRA for private-sector mandates ($113 million in fiscal year 2001, adjusted annually for inflation).

Estimate prepared by: Federal revenues: Erin Whitaker; IRS user fees (direct spending): John R. Righter; DoL civil penalties and administrative expenses: Christi Hawley Sadoti; Pension Benefit Guaranty Corporation: Tamara Ohler.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis; Roberton Williams, Deputy Assistant Director for Tax Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning retirement security and pension reforms that the Committee concluded that it is appropriate and timely to enact the revenue provisions included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises. . ."), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104–4).

The Committee has determined that the following provision of the bill contains Federal mandates on the private sector (for amounts, see tables in Part IV.A., above): prohibited allocation of stock in an S corporation ESOP.

The costs required to comply with the Federal private sector mandate generally are no greater than the estimated budget effects of the provision. Benefits from the provision include improved administration of the Federal tax laws and a more accurate measurement of income for Federal income tax purposes.

The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

E. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the "IRS Reform Act") requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has "widespread applicability" to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have widespread applicability to individuals or small businesses.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

* * * * * * *

SEC. 72. ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.

(a) * * *

* * * * * * *

(f) SPECIAL RULES FOR COMPUTING EMPLOYEES' CONTRIBUTIONS.—In computing, for purposes of subsection (c)(1)(A), the aggregate amount of premiums or other consideration paid for the contract, and for purposes of subsection (e)(6), the aggregate premiums or other consideration paid, amounts contributed by the employer shall be included, but only to the extent that—

(1) * * *

* * * * * * *

Paragraph (2) shall not apply to amounts which were contributed by the employer after December 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of section 911 if such amounts had been paid directly to the employee at the time of contribution. The preceding sentence shall not apply to amounts which were contributed by the employer, as determined under regulations prescribed by the Secretary, to provide pension or annuity credits, to the extent such credits are attributable to services performed before January 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on March 12, 1962, and on that date applicable to such services, or to the extent such credits are attributable to services performed as a foreign missionary (within the meaning of ⟦section 403(b)(2)(D)(iii)⟧ *section 403(b)(2)(D)(iii), as in effect before the enactment of the Comprehensive Retirement Security and Pension Reform Act of 2001).*

* * * * * * *

(o) SPECIAL RULES FOR DISTRIBUTIONS FROM QUALIFIED PLANS TO WHICH EMPLOYEE MADE DEDUCTIBLE CONTRIBUTIONS.—

(1) * * *

* * * * * * *

(4) SPECIAL RULE FOR TREATMENT OF ROLLOVER AMOUNTS.—For purposes of sections 402(c), 403(a)(4), ⟦and 408(d)(3)⟧ *403(b)(8), 408(d)(3), and 457(e)(16)*, the Secretary shall prescribe regulations providing for such allocations of amounts attributable to accumulated deductible employee contributions, and for such other rules, as may be necessary to insure that such accumulated deductible employee contributions do not become eligible for additional tax benefits (or freed from limitations) through the use of rollovers.

* * * * * * *

(t) 10-PERCENT ADDITIONAL TAX ON EARLY DISTRIBUTIONS FROM QUALIFIED RETIREMENT PLANS.—

(1) * * *

* * * * * * *

(9) SPECIAL RULE FOR ROLLOVERS TO SECTION 457 PLANS.—For purposes of this subsection, a distribution from an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A) shall be treated as a distribution from a qualified retirement plan described

in section 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c)).

* * * * * * *

PART III—ITEMS SPECIFICALLY EXCLUDED IN GROSS INCOME

* * * * * * *

SEC. 132. CERTAIN FRINGE BENEFITS.

(a) EXCLUSION FROM GROSS INCOME.—Gross income shall not include any fringe benefit which qualifies as a—

(1) * * *

* * * * * * *

(5) qualified transportation fringe, ⟦or⟧

(6) qualified moving expense reimbursement⟦.⟧*; or*

(7) qualified retirement planning services.

* * * * * * *

(m) QUALIFIED RETIREMENT PLANNING SERVICES.—

(1) IN GENERAL.—For purposes of this section, the term "qualified retirement planning services" means any retirement planning advice or information provided to an employee and his spouse by an employer maintaining a qualified employer plan.

(2) NONDISCRIMINATION RULE.—Subsection (a)(7) shall apply in the case of highly compensated employees only if such services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

(3) QUALIFIED EMPLOYER PLAN.—For purposes of this subsection, the term "qualified employer plan" means a plan, contract, pension, or account described in section 219(g)(5).

⟦(m)⟧ *(n)* REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

* * * * * * *

PART VII—ADDTIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

* * * * * * *

SEC. 219. RETIREMENT SAVINGS.

(a) * * *

(b) MAXIMUM AMOUNT OF DEDUCTION.—

(1) IN GENERAL.—The amount allowable as a deduction under subsection (a) to any individual for any taxable year shall not exceed the lesser of—

(A) ⟦$2,000⟧ *the deductible amount*, or

* * * * * * *

(5) DEDUCTIBLE AMOUNT.—For purposes of paragraph (1)(A)—

(A) IN GENERAL.—The deductible amount shall be determined in accordance with the following table:

For taxable years beginning in:	*The deductible amount is:*
2002	*$3,000*
2003	*$4,000*
2004 and thereafter	*$5,000.*

(B) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS 50 OR OLDER.—In the case of an individual who has attained the age of 50 before the close of the taxable year, the deductible amount for taxable years beginning in 2002 or 2003 shall be $5,000.

(C) COST-OF-LIVING ADJUSTMENT.—

(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2004, the $5,000 amount under subparagraph (A) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2003" for "calendar year 1992" in subparagraph (B) thereof.

(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $500, such amount shall be rounded to the next lower multiple of $500.

* * * * * * *

(d) OTHER LIMITATIONS AND RESTRICTIONS.—

(1) * * *

(2) RECONTRIBUTED AMOUNTS.—No deduction shall be allowed under this section with respect to a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), or ⟦408(d)(3)⟧ *408(d)(3), or 457(e)(16).*

* * * * * * *

Subchapter D—Deferred Compensation, Etc.

* * * * * * *

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

* * * * * * *

Subpart A—General Rule

Sec. 401. Qualified pension, profit-sharing, and stock bonus plans.

* * * * * * *

Sec. 402A. Optional treatment of elective deferrals as plus contributions.

* * * * * * *

SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) * * *

* * * * * * *

(5) SPECIAL RULES RELATING TO NONDISCRIMINATION REQUIREMENTS.—

(A) * * *

* * * * * * *

(G) ⟦STATE AND LOCAL GOVERNMENTAL PLANS⟧ *GOVERNMENTAL PLANS*.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of ⟦section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).⟧ *section 414(d))*.

* * * * * * *

(9) REQUIRED DISTRIBUTIONS.—

(A) * * *

(B) REQUIRED DISTRIBUTION WHERE EMPLOYEE DIES BEFORE ENTIRE INTEREST IS DISTRIBUTED.—

⟦(i) WHERE DISTRIBUTIONS HAVE BEGUN UNDER SUBPARAGRAPH (A)(ii).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

⟦(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

⟦(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.⟧

⟦(ii)⟧ *(i)* 5-YEAR RULE ⟦FOR OTHER CASES⟧.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before ⟦the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii)⟧ *his entire interest has been distributed to him*, the entire interest of the employee will be distributed within 5 years after the death of such employee.

⟦(iii)⟧ *(ii)* EXCEPTION TO 5-YEAR RULE FOR CERTAIN AMOUNTS PAYABLE OVER LIFE OF BENEFICIARY.—If—

(I) * * *

* * * * * * *

for purposes of clause ⟦(ii)⟧ *(i)*, the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

⟦(iv)⟧ *(iii)* SPECIAL RULE FOR SURVIVING SPOUSE OF EMPLOYEE.—If the designated beneficiary referred to in clause ⟦(iii)(I)⟧ *(ii)(I)* is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause ⟦(iii)(III)⟧ *(ii)(III)* shall not be earlier than ⟦the date on which the employee would have attained age 70½,⟧ *April 1 of the calendar year following the calendar year in which the spouse attains 70½,* and

(II) if the surviving spouse dies before ⟦the distributions to such spouse begin,⟧ *his entire interest has been distributed to him,* this subparagraph shall be applied as if the surviving spouse were the employee.

* * * * * * *

(17) COMPENSATION LIMIT.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed ⟦$150,000⟧ *$200,000*.

(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the ⟦$150,000⟧ *$200,000* amount in subparagraph (A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period shall be the calendar quarter beginning ⟦October 1, 1993⟧ *July 1, 2001*, and any increase which is not a multiple of ⟦$10,000⟧ *$5,000* shall be rounded to the next lowest multiple of ⟦$10,000⟧ *$5,000*.

* * * * * * *

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

(A) * * *

* * * * * * *

(H) ⟦EXCEPTION FOR STATE AND LOCAL GOVERNMENTAL PLANS⟧ *EXCEPTION FOR GOVERNMENTAL PLANS*.—This paragraph shall not apply to a governmental plan (within the meaning of ⟦section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).⟧ *section 414(d)).*

* * * * * * *

(31) OPTIONAL DIRECT TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.—

(A) * * *

(B) LIMITATION.—Subparagraph (A) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402(c) ⟦and 403(a)(4)⟧*, 403(a)(4), 403(b)(8), and 457(e)(16)). The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—*

(i) agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

* * * * * * *

(c) DEFINITIONS AND RULES RELATING TO SELF-EMPLOYED INDIVIDUALS AND OWNER-EMPLOYEES.—For purposes of this section—

(1) * * *

(2) EARNED INCOME.—

(A) IN GENERAL.—The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) * * *

* * * * * * *

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date. *For purposes of this part only (other than sections 419 and 419A), this subparagraph shall be applied as if the term "trade or business" for purposes of section 1402 included service described in section 1402(c)(6).*

* * * * * * *

(k) CASH OR DEFERRED ARRANGEMENTS.—

(1) * * *

(2) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)—

(A) * * *

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election—

(i) may not be distributable to participants or other beneficiaries earlier than—

(I) ⟦separation from service⟧ *severance from employment*, death, or disability,

* * * * * * *

(3) APPLICATION OF PARTICIPATION AND DISCRIMINATION STANDARDS.—

(A) * * *

* * * * * * *

(G) *GOVERNMENTAL PLANS.*—A governmental plan (within the meaning of section 414(d) ⟦maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)⟧ shall be treated as meeting the requirements of this paragraph.

* * * * * * *

(10) DISTRIBUTIONS UPON TERMINATION OF PLAN [OR DISPOSITION OF ASSETS OR SUBSIDIARY].—

[(A) IN GENERAL.—The following events are described in this paragraph:

[(i) TERMINATION.—The termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

[(ii) DISPOSITION OF ASSETS.—The disposition by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation, but only with respect to an employee who continues employment with the corporation acquiring such assets.

[(iii) DISPOSITION OF SUBSIDIARY.—The disposition by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)), but only with respect to an employee who continues employment with such subsidiary.]

(A) IN GENERAL.—An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(B) DISTRIBUTIONS MUST BE LUMP SUM DISTRIBUTIONS.—

(i) IN GENERAL.—[An event] *A termination* shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of [the event] *the termination*.

* * * * * * *

[(C) TRANSFEROR CORPORATION MUST MAINTAIN PLAN.—An event shall not be treated as described in clause (ii) or (iii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition.]

(11) ADOPTION OF SIMPLE PLAN TO MEET NONDISCRIMINATION TESTS.—

(A) * * *

(B) CONTRIBUTION REQUIREMENTS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement—

(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage ofcompensation of the employee but which in no event exceeds [$6,000] *the amount in effect under section 408(p)(2)(A)(ii)*.

* * * * * * *

[(E) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $6,000 amount under subparagraph (B)(i)(I) at the same time and in the same manner as under section 408(p)(2)(E).】

* * * * * * *

(m) NONDISCRIMINATION TEST FOR MATCHING CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS.—

(1) * * *

* * * * * * *

【(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k) including—

【(A) such regulations as may be necessary to prevent the multiple use of the alternative limitation with respect to any highly compensated employee, and

【(B) regulations permitting appropriate aggregation of plans and contributions.

For purposes of the preceding sentence, the term “alternative limitation” means the limitation of section 401(k)(3)(A)(ii)(II) and the limitation of paragraph (2)(A)(ii) of this subsection.】

(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions.

* * * * * * *

SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

(a) * * *

* * * * * * *

(c) RULES APPLICABLE TO ROLLOVERS FROM EXEMPT TRUSTS.—

(1) * * *

(2) MAXIMUM AMOUNT WHICH MAY BE ROLLED OVER.—In the case of any eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)). *The preceding sentence shall not apply to such distribution to the extent—*

(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).

【(3) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.】

(3) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

(B) HARDSHIP EXCEPTION.—The Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this subsection, the term "eligible rollover distribution" means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include—

(A) * * *

* * * * * * *

[(C) any hardship distribution described in section 401(k)(2)(B)(i)(IV).**]**

(C) any distribution which is made upon hardship of the employee.

* * * * * * *

(8) DEFINITIONS.—For purposes of this subsection—

(A) * * *

(B) ELIGIBLE RETIREMENT PLAN.—The term "eligible retirement plan" means—

(i) * * *

* * * * * * *

(iii) a qualified trust, **[**and**]**

(iv) an annuity plan described in section 403(a)**[**.**]***,*

(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and

(vi) an annuity contract described in section 403(b).

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated plus account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated plus account and a Roth IRA.

(9) ROLLOVER WHERE SPOUSE RECEIVES DISTRIBUTION AFTER DEATH OF EMPLOYEE.—If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee**[**; except that a trust or plan described in clause (iii) or (iv) of paragraph (8)(B) shall not be treated as an eligible retirement plan with respect to such distribution**]**.

* * * * * * *

(10) SEPARATE ACCOUNTING.—Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.

* * * * * * *

(f) WRITTEN EXPLANATION TO RECIPIENTS OF DISTRIBUTIONS ELIGIBLE FOR ROLLOVER TREATMENT.—

(1) IN GENERAL.—The plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution [from an eligible retirement plan], provide a written explanation to the recipient—

(A) of the provisions under which the recipient may have the distribution directly transferred to [another eligible retirement plan] *an eligible retirement plan*,

(B) of the provision which requires the withholding of tax on the distribution if it is not directly transferred to [another eligible retirement plan] *an eligible retirement plan*,

(C) of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution, [and]

(D) if applicable, of the provisions of subsections (d) and (e) of this section[.]*, and*

(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

(2) DEFINITIONS.—For purposes of this subsection—

(A) ELIGIBLE ROLLOVER DISTRIBUTION.—The term "eligible rollover distribution" has the same meaning as when used in subsection (c) of this section [or paragraph (4) of section 403(a)]*, paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16).*

* * * * * * *

(g) LIMITATION ON EXCLUSION FOR ELECTIVE DEFERRALS.—

[(1) IN GENERAL.—Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds $7,000.]

(1) IN GENERAL.—

(A) LIMITATION.—Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar amount. The preceding sentence shall not apply to so much of such excess as does not exceed the designated plus contributions of the individual for the taxable year.

(B) APPLICABLE DOLLAR AMOUNT.—For purposes of subparagraph (A), the applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	***The applicable dollar amount:***
2002	*$11,000*
2003	*$12,000*
2004	*$13,000*

2005	*$14,000*
2006 or thereafter	*$15,000.*

(2) DISTRIBUTION OF EXCESS DEFERRALS.—

(A) IN GENERAL.—If any amount (hereinafter in this paragraph referred to as "excess deferrals") is included in the gross income of an individual under paragraph (1) *(or would be included but for the last sentence thereof)* for any taxable year—

(i) * * *

* * * * * * *

[(4) INCREASE IN LIMIT FOR AMOUNTS CONTRIBUTED UNDER SECTION 403(b) CONTRACTS.—The limitation under paragraph (1) shall be increased (but not to an amount in excess of $9,500) by the amount of any employer contributions for the taxable year described in paragraph (3)(C).

[(5) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $7,000 amount under paragraph (1) at the same time and in the same manner as under section 415(d); except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.]

(4) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

[(6)] *(5)* DISREGARD OF COMMUNITY PROPERTY LAWS.—This subsection shall be applied without regard to community property laws.

[(7)] *(6)* COORDINATION WITH SECTION 72.—For purposes of applying section 72, any amount includible in gross income for any taxable year under this subsection but which is not distributed from the plan during such taxable year shall not be treated as investment in the contract.

[(8)] *(7)* SPECIAL RULE FOR CERTAIN ORGANIZATIONS.—

(A) * * *

(B) Qualified organizationFor purposes of this paragraph, the term "qualified organization" means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches. Such term includes any organization described in section 414(e)(3)(B)(ii). Terms used in this subparagraph shall have the same meaning as when used in section 415(c)(4) *(as in effect before the enactment of the Comprehensive Retirement Security and Pension Reform Act of 2001)*.

* * * * * * *

[(9)] *(8)* MATCHING CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS NOT TREATED AS ELECTIVE EMPLOYER CONTRIBUTIONS.—Except as provided in section 401(k)(3)(D)(ii), any matching contribution described in section 401(m)(4)(A) which is made on behalf of a self-employed individual (as defined in section 401(c) shall not be treated as an elective employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) for purposes of this title.

* * * * * * *

SEC. 402A. OPTIONAL TREATMENT OF ELECTIVE DEFERRALS AS PLUS CONTRIBUTIONS.

(a) GENERAL RULE.—If an applicable retirement plan includes a qualified plus contribution program—

(1) any designated plus contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and

(2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

(b) QUALIFIED PLUS CONTRIBUTION PROGRAM.—For purposes of this section—

(1) IN GENERAL.—The term "qualified plus contribution program" means a program under which an employee may elect to make designated plus contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

(2) SEPARATE ACCOUNTING REQUIRED.—A program shall not be treated as a qualified plus contribution program unless the applicable retirement plan—

(A) establishes separate accounts ("designated plus accounts") for the designated plus contributions of each employee and any earnings properly allocable to the contributions, and

(B) maintains separate recordkeeping with respect to each account.

(c) DEFINITIONS AND RULES RELATING TO DESIGNATED PLUS CONTRIBUTIONS.—For purposes of this section—

(1) DESIGNATED PLUS CONTRIBUTION.—The term "designated plus contribution" means any elective deferral which—

(A) is excludable from gross income of an employee without regard to this section, and

(B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

(2) DESIGNATION LIMITS.—The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of—

(A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section), over

(B) the aggregate amount of elective deferrals of the employee for the taxable year which the employee does not designate under paragraph (1).

(3) ROLLOVER CONTRIBUTIONS.—

(A) IN GENERAL.—A rollover contribution of any payment or distribution from a designated plus account which is otherwise allowable under this chapter may be made only if the contribution is to—

(i) another designated plus account of the individual from whose account the payment or distribution was made, or

(ii) a Roth IRA of such individual.

(B) COORDINATION WITH LIMIT.—Any rollover contribution to a designated plus account under subparagraph (A) shall not be taken into account for purposes of paragraph (1).

(d) DISTRIBUTION RULES.—For purposes of this title—

(1) EXCLUSION.—Any qualified distribution from a designated plus account shall not be includible in gross income.

(2) QUALIFIED DISTRIBUTION.—For purposes of this subsection—

(A) IN GENERAL.—The term "qualified distribution" has the meaning given such term by section 408A(d)(2)(A) (without regard to clause (iv) thereof).

(B) DISTRIBUTIONS WITHIN NONEXCLUSION PERIOD.—A payment or distribution from a designated plus account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of—

(i) the first taxable year for which the individual made a designated plus contribution to any designated plus account established for such individual under the same applicable retirement plan, or

(ii) if a rollover contribution was made to such designated plus account from a designated plus account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated plus contribution to such previously established account.

(C) DISTRIBUTIONS OF EXCESS DEFERRALS AND CONTRIBUTIONS AND EARNINGS THEREON.—The term "qualified distribution" shall not include any distribution of an excess deferral under section 402(g)(2) or any excess contribution under section 401(k)(8), and any income on the excess deferral or contribution.

(3) TREATMENT OF DISTRIBUTIONS OF CERTAIN EXCESS DEFERRALS.—Notwithstanding section 72, if any excess deferral under section 402(g)(2) attributable to a designated plus contribution is not distributed on or before the 1st April 15 following the close of the taxable year in which such excess deferral is made, the amount of such excess deferral shall—

(A) not be treated as investment in the contract, and

(B) be included in gross income for the taxable year in which such excess is distributed.

(4) AGGREGATION RULES.—Section 72 shall be applied separately with respect to distributions and payments from a designated plus account and other distributions and payments from the plan.

(e) OTHER DEFINITIONS.—For purposes of this section—

(1) APPLICABLE RETIREMENT PLAN.—The term "applicable retirement plan" means—

(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a), and

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

(2) ELECTIVE DEFERRAL.—The term "elective deferral" means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3).

SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.

(a) * * *

(b) TAXABILITY OF BENEFICIARY UNDER ANNUITY PURCHASED BY SECTION 501(c)(3) ORGANIZATION OR PUBLIC SCHOOL.—

(1) GENERAL RULE.—If—

(A) * * *

* * * * * * *

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed ⟦the exclusion allowance for such taxable year⟧ *the applicable limit under section 415*. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or ⟦section 408(d)(3)(A)(iii)⟧ *section 408(d)(3)(A)(ii)* shall not be considered contributed by such employer.

⟦(2) EXCLUSION ALLOWANCE.—

⟦(A) IN GENERAL.—For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

⟦(i) the amount determined by multiplying 20 percent of his includible compensation by the number of years of service, over

⟦(ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludable from the gross income of the employee for any prior taxable year.

⟦(B) ELECTION TO HAVE ALLOWANCE DETERMINED UNDER SECTION 415 RULES.—In the case of an employee who makes an election under section 415(c)(4)(D) to have the provisions of section 415(c)(4)(C) (relating to special rule for section 403(b) contracts purchased by educational institutions, hospitals, home health service agencies, and certain churches, etc.) apply, the exclusion allowance for any such employee for the taxable year is the amount which could be contributed (under section 415 without regard to section 415(c)(8)[(7)]) by his employer under a plan described in section 403(a) if the annuity contract for the benefit of such employee were treated as a defined contribution plan maintained by the employer.

⟦(C) NUMBER OF YEARS OF SERVICE FOR DULY ORDAINED, COMMISSIONED, OR LICENSED MINISTERS OR LAY EMPLOY-

EES.—For purposes of this subsection and section 415(c)(4)(A)—

[(i) all years of service by—

[(I) a duly ordained, commissioned, or licensed minister of a church, or

[(II) a lay person,as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for 1 employer, and

[(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.

For purposes of the preceding sentence, the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e).

[(D) ALTERNATIVE EXCLUSION ALLOWANCE.—

[(i) IN GENERAL.—In the case of any individual described in subparagraph (C), the amount determined under subparagraph (A) shall not be less than the lesser of—

[(I) $3,000, or

[(II) the includible compensation of such individual.

[(ii) SUBPARAGRAPH NOT TO APPLY TO INDIVIDUALS WITH ADJUSTED GROSS INCOME OVER $17,000.—This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to any community property laws) exceeds $17,000.

[(iii) SPECIAL RULE FOR FOREIGN MISSIONARIES.—In the case of an individual described in subparagraph (C)(i) performing services outside the United States, there shall be included as includible compensation for any year under clause (i)(II) any amount contributed during such year by a church (or convention or association of churches) for an annuity contract with respect to such individual.]

(3) INCLUDIBLE COMPENSATION.—For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies *or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated*. Such term includes—

(A) * * *

* * * * * * *

(7) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—

(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) * * *

(ii) under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59½, [separates from service] *has a severance from employment*, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D), encounters financial hardship.

* * * * * * *

(8) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—If—

(i) * * *

(ii) the employee transfers any portion of the property he receives in [such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and] *such distribution to an eligible retirement plan described in section 402(c)(8)(B), and*

* * * * * * *

[(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) through (7) of section 402(c) (including paragraph (4)(C) thereof) shall apply for purposes of subparagraph (A).]

(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

* * * * * * *

(11) REQUIREMENT THAT DISTRIBUTIONS NOT BEGIN BEFORE AGE 59½, [SEPARATION FROM SERVICE] *SEVERANCE FROM EMPLOYMENT*, DEATH, OR DISABILITY.—This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59½, [separates from service] *has a severance from employment*, dies, or becomes disabled (within the meaning of section 72(m)(7)), or

* * * * * * *

(13) TRUSTEE-TO-TRUSTEE TRANSFERS TO PURCHASE PERMISSIVE SERVICE CREDIT.—No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a de-

fined benefit governmental plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

* * * * * * *

SEC. 404. DEDUCTION FOR CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN.

(a) GENERAL RULE.—If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) PENSION TRUSTS.—

(A) * * *

* * * * * * *

[(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—In the case of any defined benefit plan (other than a multiemployer plan) which has more than 100 participants for the plan year, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(l). For purposes of determining whether a plan has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(C))) shall be treated as 1 plan, but only employees of such member or employer shall be taken into account.]

(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—

(i) IN GENERAL.—In the case of any defined benefit plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded termination liability (determined as if the proposed termination date referred to in section 4041(b)(2)(A)(i)(II) of the Employee Retirement Income Security Act of 1974 were the last day of the plan year).

(ii) PLANS WITH LESS THAN 100 PARTICIPANTS.—For purposes of this subparagraph, in the case of a plan which has less than 100 participants for the plan year, termination liability shall not include the liability attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years before the termination date.

(iii) RULE FOR DETERMINING NUMBER OF PARTICIPANTS.—For purposes of determining whether a plan

has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(C))) shall be treated as one plan, but only employees of such member or employer shall be taken into account.

(iv) PLANS MAINTAINED BY PROFESSIONAL SERVICE EMPLOYERS.—Clause (i) shall not apply to a plan described in section 4021(b)(13) of the Employee Retirement Income Security Act of 1974.

* * * * * * *

(3) STOCK BONUS AND PROFIT-SHARING TRUSTS.—

(A) LIMITS ON DEDUCTIBLE CONTRIBUTIONS.—

(i) IN GENERAL.—In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), in an amount not in excess of the greater of—

(I) ❲15❳ *20* percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan, or

* * * * * * *

(B) PROFIT-SHARING PLAN OF AFFILIATED GROUP.—In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504, if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph. Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made. ⟦The term "compensation otherwise paid or accrued during the taxable year to all employees" shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable.⟧

* * * * * * *

(10) CONTRIBUTIONS BY CERTAIN MINISTERS TO RETIREMENT INCOME ACCOUNTS.—In the case of contributions made by a minister described in section 414(e)(5) to a retirement income account described in section 403(b)(9) and not by a person other than such minister, such contributions—

(A) * * *

(B) shall be deductible under this subsection to the extent such contributions do not exceed the limit on elective deferrals under section 402(g)⟦, the exclusion allowance under section 403(b)(2),⟧ or the limit on annual additions under section 415.

For purposes of this paragraph, all plans in which the minister is a participant shall be treated as one plan.

* * * * * * *

(12) DEFINITION OF COMPENSATION.—For purposes of paragraphs (3), (7), (8), and (9), the term "compensation otherwise paid or accrued during the taxable year" shall include amounts treated as "participant's compensation" under subparagraph (C) or (D) of section 415(c)(3).

* * * * * * *

(h) SPECIAL RULES FOR SIMPLIFIED EMPLOYEE PENSIONS.—

(1) IN GENERAL.—Employer contributions to a simplified employee pension shall be treated as if they are made to a plan subject to the requirements of this section. Employer contributions to a simplified employee pension are subject to the following limitations:

(A) * * *

* * * * * * *

(C) The amount deductible in a taxable year for a simplified employee pension shall not exceed ⟦15⟧ *20* percent of the compensation paid to the employees during the calendar year ending with or within the taxable year (or during the taxable year in the case of a taxable year described in subparagraph (A)(ii)). The excess of the amount contributed over the amount deductible for a taxable year shall be deductible in the succeeding taxable years in order of time, subject to the ⟦15⟧ *20* percent limit of the preceding sentence.

* * * * * * *

(j) SPECIAL RULES RELATING TO APPLICATION WITH SECTION 415.—

(1) * * *

* * * * * * *

(3) SPECIAL RULE FOR MONEY PURCHASE PLANS.—For purposes of paragraph (1)(B), in the case of a defined contribution plan which is subject to the funding standards of section 412, section 415(c)(1)(B) shall be applied by substituting "25 percent" for "100 percent".

(k) DEDUCTION FOR DIVIDENDS PAID ON CERTAIN EMPLOYER SECURITIES.—

(1) * * *

(2) APPLICABLE DIVIDEND.—For purposes of this subsection—

(A) IN GENERAL.—The term "applicable dividend" means any dividend which, in accordance with the plan provisions—

(i) is paid in cash to the participants in the plan or their beneficiaries,

(ii) is paid to the plan and is distributed in cash to participants in the plan or their beneficiaries not later than 90 days after the close of the plan year in which paid, [or]

(iii) is, at the election of such participants or their beneficiaries—

(I) payable as provided in clause (i) or (ii), or

(II) paid to the plan and reinvested in qualifying employer securities, or

[(iii)] *(iv)* is used to make payments on a loan described in subsection (a)(9) the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

* * * * * * *

(5) OTHER RULES.—For purposes of this subsection—

(A) DISALLOWANCE OF DEDUCTION.—The Secretary may disallow the deduction under paragraph (1) for any dividend if the Secretary determines that such dividend constitutes, in substance, an *avoidance or* evasion of taxation.

* * * * * * *

(l) LIMITATION ON AMOUNT OF ANNUAL COMPENSATION TAKEN INTO ACCOUNT.—For purposes of applying the limitations of this section, the amount of annual compensation of each employee taken into account under the plan for any year shall not exceed [$150,000] *$200,000*. The Secretary shall adjust the [$150,000] *$200,000* amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B). For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.

* * * * * * *

(n) ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DEDUCTION LIMITS.—Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a), and such elective defer-

rals shall not be taken into account in applying any such limitation to any other contributions.

* * * * * * *

SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

(a) INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this section, the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) in section 402(c), 403(a)(4), ⟦or 403(b)(8),⟧ *403(b)(8), or 457(e)(16)* no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year ⟦in excess of $2,000 on behalf of any individual⟧ *on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A).*

* * * * * * *

(b) INDIVIDUAL RETIREMENT ANNUITY.—For purposes of this section, the term "individual retirement annuity" means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

(1) * * *

(2) Under the contract—

(A) the premiums are not fixed,

(B) the annual premium on behalf of any individual will not exceed ⟦$2,000⟧ *the dollar amount in effect under section 219(b)(1)(A)*, and

* * * * * * *

(4) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed ⟦$2,000⟧ *the dollar amount in effect under section 219(b)(1)(A).*

* * * * * * *

(d) TAX TREATMENT OF DISTRIBUTIONS.—

(1) * * *

* * * * * * *

(3) ROLLOVER CONTRIBUTION.—An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) IN GENERAL.—Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; *or*

[(ii) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution (as defined in section 402 from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or from an annuity plan described in section 403(a) (and any earnings on such contribution), and the entire amount received (including property and other money) is paid (for the benefit of such individual) into another such trust or annuity plan not later than the 60th day on which the individual receives the payment or the distribution; or

[(iii)(I) the entire amount received (including money and other property) represents the entire interest in the account or the entire value of the annuity,

[(II) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an annuity contract described in section 403(b) and any earnings on such rollover, and

[(II) the entire amount thereof is paid into another annuity contract described in section 403(b) (for the benefit of such individual) not later than the 60th day after he receives the payment or distribution.]

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term "eligible retirement plan" means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).

* * * * * * *

(D) PARTIAL ROLLOVERS PERMITTED.—

(i) IN GENERAL.—If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause [(i), (ii), or (iii)] *(i) or (ii)* of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.

* * * * * * *

【(G) SIMPLE RETIREMENTS ACCOUNTS.—This paragraph shall not apply to any amount paid or distributed out of a simple retirement account (as defined in subsection (p)) unless—

【(i) it is paid into another simple retirement account, or

【(ii) in the case of any payment or distribution to which section 72(t)(6) does not apply, it is paid into an individual retirement plan.】

(G) SIMPLE RETIREMENT ACCOUNTS.—In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not apply unless such payment or distribution is paid into another simple retirement account.

(H) APPLICATION OF SECTION 72.—

(i) IN GENERAL.—If—

(I) a distribution is made from an individual retirement plan, and

(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

(ii) APPLICABLE RULES.—In the case of a distribution described in clause (i)—

(I) section 72 shall be applied separately to such distribution,

(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(I) WAIVER OF 60-DAY REQUIREMENT.—The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

* * * * * * *

(j) INCREASE IN MAXIMUM LIMITATIONS FOR SIMPLIFIED EMPLOYEE PENSIONS.—In the case of any simplified employee pension, subsections (a)(1) and (b)(2) of this section shall be applied by increasing the ⟦$2,000⟧ amounts contained therein by the amount of the limitation in effect under section 415(c)(1)(A).

(k) SIMPLIFIED EMPLOYEE PENSION DEFINED.—

(1) * * *

* * * * * * *

(3) CONTRIBUTIONS MAY NOT DISCRIMINATE IN FAVOR OF THE HIGHLY COMPENSATED, ETC.—

(A) * * *

* * * * * * *

(C) CONTRIBUTIONS MUST BEAR UNIFORM RELATIONSHIP TO TOTAL COMPENSATION.—For purposes of subparagraph (A), and except as provided in subparagraph (D), employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)) shall be considered discriminatory unless contributions thereto bear a uniform relationship to the compensation (not in excess of the first ⟦$150,000⟧ *$200,000*) of each employee maintaining a simplified employee pension.

* * * * * * *

(6) EMPLOYEE MAY ELECT SALARY REDUCTION ARRANGEMENT.—

(A) * * *

* * * * * * *

(D) DEFERRAL PERCENTAGE.—For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

(i) * * *

(ii) the employee's compensation (not in excess of the first ⟦$150,000⟧ *$200,000*) for the year.

* * * * * * *

(8) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $300 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the ⟦$150,000⟧ *$200,000* amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B) ; except that any increase in the $300 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50.

* * * * * * *

(p) SIMPLE RETIREMENT ACCOUNTS.—

(1) * * *

(2) QUALIFIED SALARY REDUCTION ARRANGEMENT.—

(A) IN GENERAL.—For purposes of this subsection, the term "qualified salary reduction arrangement" means a written arrangement of an eligible employer under which—

(i) * * *

(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a total of ⟦$6,000⟧ *the applicable dollar amount* for any year,

*   *   *   *   *   *   *

⟦(E) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $6,000 amount under subparagraph (A)(ii) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter ending September 30, 1996, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.⟧

(E) APPLICABLE DOLLAR AMOUNT; COST-OF-LIVING ADJUSTMENT.—

(i) IN GENERAL.—For purposes of subparagraph (A)(ii), the applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	***The applicable dollar amount:***
2002	*$7,000*
2003	*$8,000*
2004	*$9,000*
2005 or thereafter	*$10,000.*

(ii) COST-OF-LIVING ADJUSTMENT.—In the case of a year beginning after December 31, 2005, the Secretary shall adjust the $10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

*   *   *   *   *   *   *

(6) DEFINITIONS.—For purposes of this subsection—

(A) COMPENSATION.—

(i) * * *

(ii) SELF-EMPLOYED.—In the case of an employee described in subparagraph (B), the term "compensation" means net earnings from self-employment determined under section 1402(a) without regard to any contribution under this subsection. *The preceding sentence shall be applied as if the term "trade or business" for purposes of section 1402 included service described in section 1402(c)(6).*

*   *   *   *   *   *   *

(8) COORDINATION WITH MAXIMUM LIMITATION UNDER SUBSECTION (A).—In the case of any simple retirement account, subsections (a)(1) and (b)(2) shall be applied by substituting "the sum of the dollar amount in effect under paragraph (2)(A)(ii) of this subsection and the employer contribution required under subparagraph (A)(ii) or (B)(i) of paragraph (2) of

this subsection, whichever is applicable" for "**[**$2,000**]** *the dollar amount in effect under section 219(b)(1)(A)*".

* * * * * * *

SEC. 408A. ROTH IRA'S.

(a) * * *

* * * * * * *

(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section, the term "qualified rollover contribution" means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). *Such term includes a rollover contribution described in section 402A(c)(3)(A).* For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

* * * * * * *

SEC. 409. QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLANS.

(a) * * *

* * * * * * *

(p) PROHIBITED ALLOCATIONS OF SECURITIES IN AN S CORPORATION.—

(1) IN GENERAL.—An employee stock ownership plan holding employer securities consisting of stock in an S corporation shall provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person.

(2) FAILURE TO MEET REQUIREMENTS.—

(A) IN GENERAL.—If a plan fails to meet the requirements of paragraph (1), the plan shall be treated as having distributed to any disqualified person the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation.

(B) CROSS REFERENCE.—

For excise tax relating to violations of paragraph (1) and ownership of synthetic equity, see section 4979A.

(3) NONALLOCATION YEAR.—For purposes of this subsection—

(A) IN GENERAL.—The term "nonallocation year" means any plan year of an employee stock ownership plan if, at any time during such plan year—

(i) such plan holds employer securities consisting of stock in an S corporation, and

(ii) disqualified persons own at least 50 percent of the number of shares of stock in the S corporation.

(B) ATTRIBUTION RULES.—For purposes of subparagraph (A)—

(i) IN GENERAL.—The rules of section 318(a) shall apply for purposes of determining ownership, except that—

(I) in applying paragraph (1) thereof, the members of an individual's family shall include members of the family described in paragraph (4)(D), and

(II) paragraph (4) thereof shall not apply.

(ii) DEEMED-OWNED SHARES.—Notwithstanding the employee trust exception in section 318(a)(2)(B)(i), individual shall be treated as owning deemed-owned shares of the individual.

Solely for purposes of applying paragraph (5), this subparagraph shall be applied after the attribution rules of paragraph (5) have been applied.

(4) DISQUALIFIED PERSON.—For purposes of this subsection—

(A) IN GENERAL.—The term "disqualified person" means any person if—

(i) the aggregate number of deemed-owned shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned shares of stock in the S corporation, or

(ii) in the case of a person not described in clause (i), the number of deemed-owned shares of such person is at least 10 percent of the number of deemed-owned shares of stock in such corporation.

(B) TREATMENT OF FAMILY MEMBERS.—In the case of a disqualified person described in subparagraph (A)(i), any member of such person's family with deemed-owned shares shall be treated as a disqualified person if not otherwise treated as a disqualified person under subparagraph (A).

(C) DEEMED-OWNED SHARES.—

(i) IN GENERAL.—The term "deemed-owned shares" means, with respect to any person—

(I) the stock in the S corporation constituting employer securities of an employee stock ownership plan which is allocated to such person under the plan, and

(II) such person's share of the stock in such corporation which is held by such plan but which is not allocated under the plan to participants.

(ii) PERSON'S SHARE OF UNALLOCATED STOCK.—For purposes of clause (i)(II), a person's share of unallocated S corporation stock held by such plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all participants in the same proportions as the most recent stock allocation under the plan.

(D) MEMBER OF FAMILY.—For purposes of this paragraph, the term "member of the family" means, with respect to any individual—

(i) the spouse of the individual,

(ii) an ancestor or lineal descendant of the individual or the individual's spouse,

(iii) a brother or sister of the individual or the individual's spouse and any lineal descendant of the brother or sister, and

(iv) the spouse of any individual described in clause (ii) or (iii).

A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual's spouse for purposes of this subparagraph.

(5) TREATMENT OF SYNTHETIC EQUITY.—For purposes of paragraphs (3) and (4), in the case of a person who owns synthetic equity in the S corporation, except to the extent provided in regulations, the shares of stock in such corporation on which such synthetic equity is based shall be treated as outstanding stock in such corporation and deemed-owned shares of such person if such treatment of synthetic equity of 1 or more such persons results in—

(A) the treatment of any person as a disqualified person, or

(B) the treatment of any year as a nonallocation year.

For purposes of this paragraph, synthetic equity shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of section 318(a). If, without regard to this paragraph, a person is treated as a disqualified person or a year is treated as a nonallocation year, this paragraph shall not be construed to result in the person or year not being so treated.

(6) DEFINITIONS.—For purposes of this subsection—

(A) EMPLOYEE STOCK OWNERSHIP PLAN.—The term "employee stock ownership plan" has the meaning given such term by section 4975(e)(7).

(B) EMPLOYER SECURITIES.—The term "employer security" has the meaning given such term by section 409(l).

(C) SYNTHETIC EQUITY.—The term "synthetic equity" means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

[(p)**]** *(q)* CROSS REFERENCES.—

(1) For requirements for allowance of employee plan credit, see section 48(n).

(2) For assessable penalties for failure to meet requirements of this section, or for failure to make contributions required with respect to the allowance of an employee plan credit or employee stock ownership credit, see section 6699.

(3) For requirements for allowance of an employee stock ownership credit, see section 41.

* * * * * * *

Subpart B—Special Rules

* * * * * * *

SEC. 410. MINIMUM PARTICIPATION STANDARDS.

(a) * * *

(b) MINIMUM COVERAGE REQUIREMENTS.—

(1) IN GENERAL.—A trust shall not constitute a qualified trust under section 401(a) unless such trust is designated by the employer as part of a plan which meets 1 of the following requirements:

(A) * * *

* * * * * * *

(D) In the case that the plan fails to meet the requirements of subparagraphs (A), (B) and (C), the plan—

(i) satisfies subparagraph (B), as in effect immediately before the enactment of the Tax Reform Act of 1986,

(ii) is submitted to the Secretary for a determination of whether it satisfies the requirement described in clause (i), and

(iii) satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of this subparagraph.

Clause (ii) shall apply only to the extent provided by the Secretary.

* * * * * * *

(3) EXCLUSION OF CERTAIN EMPLOYEES.—For purposes of this subsection, there shall be excluded from consideration—

(A) * * *

* * * * * * *

(C) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)*, determined without regard to the reference to subchapter D in the last sentence thereof*).

* * * * * * *

SEC. 411. MINIMUM VESTING STANDARDS.

(a) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).÷

(1) * * *

(2) EMPLOYER CONTRIBUTIONS.—[A plan] *Except as provided in paragraph (12), a plan* satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A) or (B).

(A) * * *

(11) RESTRICTIONS ON CERTAIN MANDATORY DISTRIBUTIONS.—

(A) * * *

* * * * * * *

(D) SPECIAL RULE FOR ROLLOVER CONTRIBUTIONS.—A plan shall not fail to meet the requirements of this paragraph if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term "rollover contributions" means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

* * * * * * *

(12) FASTER VESTING FOR MATCHING CONTRIBUTIONS.—In the case of matching contributions (as defined in section 401(m)(4)(A)), paragraph (2) shall be applied—

(A) by substituting "3 years" for "5 years" in subparagraph (A), and

(B) by substituting the following table for the table contained in subparagraph (B):

Years of service:	***The nonforfeitable percentage is:***
2	*20*
3	*40*
4	*60*
5	*80*
6	*100.*

(d) SPECIAL RULES.—

(1) * * *

* * * * * * *

(6) ACCRUED BENEFIT NOT TO BE DECREASED BY AMENDMENT.—

(A) * * *

(B) TREATMENT OF CERTAIN PLAN AMENDMENTS.—For purposes of subparagraph (A), a plan amendment which has the effect of—

(i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(ii) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. *The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants and does not adversely affect the rights of any participant in a more than de minimis manner.* The Secretary may by regulations provide that this subparagraph shall not apply to a plan amendment described in clause (ii) (other than a plan amendment having an effect described in clause (i)).

* * * * * * *

(D) PLAN TRANSFERS.—

(i) IN GENERAL.—A defined contribution plan (in this subparagraph referred to as the "transferee plan") shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the "transferor plan") to the extent that—

(I) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan,

(II) the terms of both the transferor plan and the transferee plan authorize the transfer described in subclause (I),

(III) the transfer described in subclause (I) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan,

(IV) the election described in subclause (III) was made after the participant or beneficiary received a notice describing the consequences of making the election, and

(V) the transferee plan allows the participant or beneficiary described in subclause (III) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

(ii) EXCEPTION.—Clause (i) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

(E) ELIMINATION OF FORM OF DISTRIBUTION.—Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This subparagraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

(i) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated, and

(ii) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.

* * * * * * *

SEC. 412. MINIMUM FUNDING STANDARDS.

(a) * * *

* * * * * * *

(c) SPECIAL RULES.—

(1) * * *

* * * * * * *

(7) FULL-FUNDING LIMITATION.—

(A) IN GENERAL.—For purposes of paragraph (6), the term "full-funding limitation" means the excess (if any) of—

(i) the lesser of

(I) [the applicable percentage] *in the case of plan years beginning before January 1, 2004, the applicable percentage* of current liability (including the expected increase in current liability due to benefits accruing during the plan year), or

* * * * * * *

[(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

[In the case of any plan year beginning in—	**The applicable percentage is—**
1999 or 2000	155
2001 or 2002	160
2003 or 2004	165
2005 and succeeding years	170]

(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

In the case of any plan year beginning in—	***The applicable percentage is—***
2002	*165*
2003	*170.*

* * * * * * *

[(9) ANNUAL VALUATION.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.]

(9) ANNUAL VALUATION.—

(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

(B) VALUATION DATE.—

(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) ELECTION TO USE PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if—

(I) an election is in effect under this clause with respect to the plan, and

(II) as of such date, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) ELECTION.—An election under clause (ii), once made, shall be irrevocable without the consent of the Secretary.

* * * * * * *

SEC. 414. DEFINITIONS AND SPECIAL RULES.

(a) * * *

* * * * * * *

(p) QUALIFIED DOMESTIC RELATIONS ORDER DEFINED.—For purposes of this subsection and section 401(a)(13)—

(1) * * *

* * * * * * *

(10) WAIVER OF CERTAIN DISTRIBUTION REQUIREMENTS.—With respect to the requirements of subsections (a) and (k) of section 401, section 403(b), ⟦and section 409(d)⟧ *section 409(d), and section 457(d)*, a plan shall not be treated as failing to meet such requirements solely by reason of payments to an alternative payee pursuant to a qualified domestic relations order.

(11) APPLICATION OF RULES TO ⟦GOVERNMENTAL AND CHURCH PLANS⟧ *CERTAIN OTHER PLANS*.—For purposes of this title, a distribution or payment from a governmental plan (as defined in subsection (d)) or a church plan (as described in subsection (e)) *or an eligible deferred compensation plan (within the meaning of section 457(b))* shall be treated as made pursuant to a qualified domestic relations order if it is made pursuant to a domestic relations order which meets the requirement of clause (i) of paragraph (1)(A).

(12) TAX TREATMENT OF PAYMENTS FROM A SECTION 457 PLAN.—If a distribution or payment from an eligible deferred compensation plan described in section 457(b) is made pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to such distribution or payment.

⟦(12)⟧ *(13)* CONSULTATION WITH THE SECRETARY.—In prescribing regulations under this subsection and section 401(a)(13), the Secretary of Labor shall consult with the Secretary.

* * * * * * *

(v) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER.—

(1) IN GENERAL.—An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

(2) LIMITATION ON AMOUNT OF ADDITIONAL DEFERRALS.—A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of—

(A) $5,000, or

(B) the excess (if any) of—

(i) the participant's compensation for the year, over

(ii) any other elective deferrals of the participant for such year which are made without regard to this subsection.

(3) TREATMENT OF CONTRIBUTIONS.—In the case of any contribution to a plan under paragraph (1), such contribution shall not, with respect to the year in which the contribution is made—

(A) be subject to any otherwise applicable limitation contained in section 402(g), 402(h)(2), 404(a), 404(h), 408(p)(2)(A)(ii), 415, or 457, or

(B) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan.

(4) APPLICATION OF NONDISCRIMINATION RULES.—

(A) IN GENERAL.—An applicable employer plan shall not be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features if the plan allows all eligible participants to make the same election with respect to the additional elective deferrals under this subsection.

(B) AGGREGATION.—For purposes of subparagraph (A), all plans maintained by employers who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 plan.

(5) ELIGIBLE PARTICIPANT.—For purposes of this subsection, the term "eligible participant" means, with respect to any plan year, a participant in a plan—

(A) who has attained the age of 50 before the close of the plan year, and

(B) with respect to whom no other elective deferrals may (without regard to this subsection) be made to the plan for the plan year by reason of the application of any limitation or other restriction described in paragraph (3) or comparable limitation contained in the terms of the plan.

(6) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

(A) APPLICABLE EMPLOYER PLAN.—The term "applicable employer plan" means—

(i) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

(iii) an eligible deferred compensation plan under section 457 of an eligible employer as defined in section 457(e)(1)(A), and

(iv) an arrangement meeting the requirements of section 408 (k) or (p).

(B) ELECTIVE DEFERRAL.—The term "elective deferral" has the meaning given such term by subsection (u)(2)(C).

(C) EXCEPTION FOR SECTION 457 PLANS.—This subsection shall not apply to an applicable employer plan described in subparagraph (A)(iii) for any year to which section 457(b)(3) applies.

(D) COST-OF-LIVING ADJUSTMENT.—In the case of a year beginning after December 31, 2006, the Secretary shall adjust annually the $5,000 amount in paragraph (2)(A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period taken into account shall be the calendar quarter beginning July 1, 2005, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS UNDER QUALIFIED PLANS.

(a) GENERAL RULE.—

(1) * * *

(2) SECTION APPLIES TO CERTAIN ANNUITIES AND ACCOUNTS.—In the case of—

(A) * * *

* * * * * * *

such a contract, plan, or pension shall not be considered to be described in section 403(a), 403(b), or 408(k), as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate【, and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2)】.

(b) LIMITATION FOR DEFINED BENEFIT PLANS.—

(1) IN GENERAL.—Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

(A) 【$90,000】 *$160,000*, or

* * * * * * *

(2) ANNUAL BENEFIT.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(c), 403(a)(4), 【and 408(d)(3)】 *403(b)(8), 408(d)(3), and 457(e)(16)*) are made.

(B) ADJUSTMENT FOR CERTAIN OTHER FORMS OF BENEFIT.—If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(c), 403(a)(4), [and 408(d)(3)] *403(b)(8), 408(d)(3), and 457(e)(16)*), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 417 shall not be taken into account.

(C) ADJUSTMENT TO [$90,000] *$160,000* LIMIT WHERE BENEFIT BEGINS BEFORE [THE SOCIAL SECURITY RETIREMENT AGE] *AGE 62*.—If the retirement income benefit under the plan begins before [the social security retirement age] *age 62*, the determination as to whether the [$90,000] *$160,000* limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by reducing the limitation of paragraph (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a [$90,000] *$160,000* annual benefit beginning at [the social security retirement age] *age 62*. [The reduction under this subparagraph shall be made in such manner as the Secretary may prescribe which is consistent with the reduction for old-age insurance benefits commencing before the social security retirement age under the Social Security Act.]

(D) ADJUSTMENT TO [$90,000] *$160,000* LIMIT WHERE BENEFIT BEGINS AFTER [THE SOCIAL SECURITY RETIREMENT AGE] *AGE 65*.—If the retirement income benefit under the plan begins after [the social security retirement age] *age 65*, the determination as to whether the [$90,000] *$160,000* limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by increasing the limitation of paragraph (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a [$90,000] *$160,000* annual benefit beginning at [the social security retirement age] *age 65*.

* * * * * * *

[(F) PLANS MAINTAINED BY GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—In the case of a governmental plan (within the meaning of section 414(d)), a plan maintained by an organization (other than a governmental unit) exempt from tax under this subtitle, or a qualified merchant marine plan—

[(i) subparagraph (C) shall be applied—

⟦(I) by substituting “age 62” for “social security retirement age” each place it appears, and

⟦(II) as if the last sentence thereof read as follows: “The reduction under this subparagraph shall not reduce the limitation of paragraph (1)(A) below (i) $75,000 if the benefit begins at or after age 55, or (ii) if the benefit begins before age 55, the equivalent of the $75,000 limitation for age 55.”, and

⟦(ii) subparagraph (D) shall be applied by substituting “age 65” for “social security retirement age” each place it appears.

For purposes of this subparagraph, the term “qualified merchant marine plan” means a plan in existence on January 1, 1986, the participants in which are merchant marine officers holding licenses issued by the Secretary of Transportation under title 46, United States Code.⟧

* * * * * * *

(7) BENEFITS UNDER CERTAIN COLLECTIVELY BARGAINED PLANS.—For a year, the limitation referred to in paragraph (1)(B) shall not apply to benefits with respect to a participant under a defined benefit plan *(other than a multiemployer plan)*—

(A) * * *

* * * * * * *

This paragraph shall not apply to a participant whose compensation for any 3 years during the 10-year period immediately preceding the year in which he separates from service exceeded the average compensation for such 3 years of all participants in such plan. This paragraph shall not apply to a participant for any period for which he is a participant under another plan to which this section applies which is maintained by an employer maintaining this plan. For any year for which the paragraph applies to benefits with respect to a participant, paragraph (1)(A) and subsection (d)(1)(A) shall be applied with respect to such participant by substituting ⟦the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for “$90,000”⟧ *one-half the amount otherwise applicable for such year under paragraph (1)(A) for “$160,000”.*

* * * * * * *

⟦(9) SPECIAL RULE FOR COMMERCIAL AIRLINE PILOTS.—

⟦(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot—

⟦(i) the rule of paragraph (2)(F)(i)(II) shall apply, and

⟦(ii) if, as of the time of the participant’s retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before the social security retirement age, paragraph (2)(C) (after application of clause (i)) shall be applied by substituting such age for the social security retirement age.

【(B) INDIVIDUALS WHO SEPARATE FROM SERVICE BEFORE AGE 60.—If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(F) shall apply.】

(9) SPECIAL RULE FOR COMMERCIAL AIRLINE PILOTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot, if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62, paragraph (2)(C) shall be applied by substituting such age for age 62.

(B) INDIVIDUALS WHO SEPARATE FROM SERVICE BEFORE AGE 60.—If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(C) shall apply.

(10) SPECIAL RULE FOR STATE AND LOCAL GOVERNMENT PLANS.—

(A) * * *

* * * * * * *

(C) ELECTION.—

(i) IN GENERAL—.—This paragraph shall not apply to any plan unless each employer maintaining the plan elects before the close of the 1st plan year beginning after December 31, 1989, to have this subsection (other than paragraph (2)(G)) 【applied without regard to paragraph (2)(F)】.

【(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (as defined in section 414(d), subparagraph (B) of paragraph (1) shall not apply.】

(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL AND MULTIEMPLOYER PLANS.—In the case of a governmental plan (as defined in section 414(d)) or a multiemployer plan (as defined in section 414(f)), subparagraph (B) of paragraph (1) shall not apply.

(c) LIMITATION FOR DEFINED CONTRIBUTION PLANS.—

(1) IN GENERAL.—Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of—

(A) 【$30,000】 *$40,000*, or

(B) 【25】 *100* percent of the participant's compensation.

(2) ANNUAL ADDITION.—For purposes of paragraph (1), the term "annual addition" means the sum for any year of—

(A) * * *

* * * * * * *

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 【and 408(d)(3)】 *408(d)(3), and 457(e)(16)*) without regard to employee contributions to a simplified employee pension which are excludable from gross income under section 408(k)(6). Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition.

(3) PARTICIPANT'S COMPENSATION.—For purposes of paragraph (1)—

(A) * * *

* * * * * * *

(E) ANNUITY CONTRACTS.—In the case of an annuity contract described in section 403(b), the term "participant's compensation" means the participant's includible compensation determined under section 403(b)(3).

[(4) SPECIAL ELECTION FOR SECTION 403(b) CONTRACTS PURCHASED BY EDUCATIONAL ORGANIZATIONS, HOSPITALS, HOME HEALTH SERVICE AGENCIES, AND CERTAIN CHURCHES, ETC.—

[(A) In the case of amounts contributed for an annuity contract described in section 403(b) for the year in which occurs a participant's separation from the service with an educational organization, a hospital, a home health service agency, a health and welfare service agency, or a church, convention or association of churches, or an organization described in section 414(e)(3)(B)(ii), at the election of the participant there is substituted for the amount specified in paragraph (1)(B) the amount of the exclusion allowance which would be determined under section 403(b)(2) (without regard to this section) for the participant's taxable year in which such separation occurs if the participant's years of service were computed only by taking into account his service for the employer (as determined for purposes of section 403(b)(2)) during the period of years (not exceeding ten) ending on the date of such separation.

[(B) In the case of amounts contributed for an annuity contract described in section 403(b) for any year in the case of a participant who is an employee of an educational organization, a hospital, a home health service agency, a health and welfare service agency, or a church, convention or association of churches, or an organization described in section 414(e)(3)(B)(ii), at the election of the participant there is substituted for the amount specified in paragraph (1)(B) the least of—

[(i) 25 percent of the participant's includible compensation (as defined in section 403(b)(3)) plus $4,000,

[(ii) the amount of the exclusion allowance determined for the year under section 403(b)(2), or

[(iii) $15,000.

[(C) In the case of amounts contributed for an annuity contract described in section 403(b) for any year for a participant who is an employee of an educational organization, a hospital, a home health service agency, a health and welfare service agency, or a church, convention or association of churches, or an organization described in section 414(e)(3)(B)(ii), at the election of the participant the provisions of section 403(b)(2)(A) shall not apply.

⟦(D)(i) The provisions of this paragraph apply only if the participant elects its application at the time and in the manner provided under regulations prescribed by the Secretary. Not more than one election may be made under subparagraph (A) by any participant. A participant who elects to have the provisions of subparagraph (A), (B), or (C) of this paragraph apply to him may not elect to have any other subparagraph of this paragraph apply to him. Any election made under this paragraph is irrevocable.

⟦(ii) For purposes of this paragraph the term "educational organization" means an educational organization described in section 170(b)(1)(A)(ii).

⟦(iii) For purposes of this paragraph the term "home health service agency" means an organization described in subsection 501(c)(3) which is exempt from tax under section 501(a) and which has been determined by the Secretary of Health, Education, and Welfare to be a home health agency (as defined in section 1861(o) of the Social Security Act).

⟦(iv) For purposes of this paragraph, the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e).⟧

* * * * * * *

⟦(7) CERTAIN CONTRIBUTIONS BY CHURCH PLANS NOT TREATED AS EXCEEDING LIMITS.—

⟦(A) ALTERNATIVE EXCLUSION ALLOWANCE.—Any contribution or addition with respect to any participant, when expressed as an annual addition, which is allocable to the application of section 403(b)(2)(D) to such participant for such year, shall be treated as not exceeding the limitations of paragraph (1).

⟦(B) CONTRIBUTIONS NOT IN EXCESS OF $40,000 ($10,000 PER YEAR).—

⟦(i) IN GENERAL.—Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of $10,000.

⟦(ii) $40,000 AGGREGATE LIMITATION.—The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed $40,000.

⟦(iii) NO ELECTION IF PARAGRAPH (4)(A) ELECTION MADE.—No election may be made under this subparagraph for any year if an election is made under paragraph (4)(A) for such year.

⟦(C) ANNUAL ADDITION.—For purposes of this paragraph, the term "annual addition" has the meaning given such term by paragraph (2).⟧

(7) CERTAIN CONTRIBUTIONS BY CHURCH PLANS NOT TREATED AS EXCEEDING LIMIT.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of $10,000.

(B) $40,000 AGGREGATE LIMITATION.—The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed $40,000.

(C) ANNUAL ADDITION.—For purposes of this paragraph, the term "annual addition" has the meaning given such term by paragraph (2).

(d) COST-OF-LIVING ADJUSTMENTS.—

(1) IN GENERAL.—The Secretary shall adjust annually—

(A) the ⟦$90,000⟧ *$160,000* amount in subsection (b)(1)(A),

* * * * * * *

(C) the ⟦$30,000⟧ *$40,000* amount in subsection (c)(1)(A),for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

* * * * * * *

(3) BASE PERIOD.—For purposes of paragraph (2)—

(A) ⟦$90,000⟧ *$160,000* AMOUNT.—The base period taken into account for purposes of paragraph (1)(A) is the calendar quarter beginning ⟦October 1, 1986⟧ *July 1, 2001.*

* * * * * * *

(D) ⟦$30,000⟧ *$40,000* AMOUNT.—The base period taken into account for purposes of paragraph (1)(C) is the calendar quarter beginning ⟦October 1, 1993⟧ *July 1, 2001.*

⟦(4) ROUNDING.—Any increase under subparagraph (A) or (C) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.⟧

(4) ROUNDING.—

(A) $160,000 AMOUNT.—Any increase under subparagraph (A) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(B) $40,000 AMOUNT.—Any increase under subparagraph (C) of paragraph (1) which is not a multiple of $1,000 shall be rounded to the next lowest multiple of $1,000.

* * * * * * *

(f) COMBINING OF PLANS.—

(1) * * *

* * * * * * *

(3) EXCEPTION FOR MULTIEMPLOYER PLANS.—Notwithstanding paragraph (1) and subsection (g), a multiemployer plan (as defined in section 414(f)) shall not be combined or aggregated—

(A) with any other plan which is not a multiemployer plan for purposes of applying subsection (b)(1)(B) to such other plan, or

(B) with any other multiemployer plan for purposes of applying the limitations established in this section.

(g) AGGREGATION OF PLANS.—【The Secretary】 *Except as provided in subsection (f)(3), the Secretary*, in applying the provisions of this section to benefits or contributions under more than one plan maintained by the same employer, and to any trusts, contracts, accounts, or bonds referred to in subsection (a)(2), with respect to which the participant has the control required under section 414(b) or (c), as modified by subsection (h), shall, under regulations prescribed by the Secretary, disqualify one or more trusts, plans, contracts, accounts, or bonds, or any combination thereof until such benefits or contributions do not exceed the limitations contained in this section. In addition to taking into account such other factors as may be necessary to carry out the purposes of subsection (f), the regulations prescribed under this paragraph shall provide that no plan which has been terminated shall be disqualified until all other trusts, plans, contracts, accounts, or bonds have been disqualified.

* * * * * * *

(k) SPECIAL RULES.—

(1) * * *

* * * * * * *

(4) SPECIAL RULES FOR SECTIONS 403(b) AND 408.—For purposes of this section, any annuity contract described in section 403(b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). For purposes of this section, any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.

SEC. 416. SPECIAL RULES FOR TOP-HEAVY PLANS.

(a) * * *

* * * * * * *

(c) PLAN MUST PROVIDE MINIMUM BENEFITS.—

(1) DEFINED BENEFIT PLANS.—

(A) * * *

* * * * * * *

(C) YEARS OF SERVICE.—For purposes of this paragraph—

(i) IN GENERAL.—Except as provided in 【clause (ii)】 *clause (ii) or (iii)*, years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a).

* * * * * * *

(iii) EXCEPTION FOR FROZEN PLAN.—For purposes of determining an employee's years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of section 410(b)) no key employee or former key employee.

(2) DEFINED CONTRIBUTION PLANS.—

(A) IN GENERAL.—A defined contribution plan meets the requirements of the subsection if the employer contribution for the year for each participant who is a non-key employee is not less than 3 percent of such participant's compensation (within the meaning of section 415). *Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph.*

* * * * * * *

(g) TOP-HEAVY PLAN DEFINED.—For purposes of this section—

(1) * * *

* * * * * * *

⟦(3) DISTRIBUTIONS DURING LAST 5 YEARS TAKEN INTO ACCOUNT.—For purposes of determining—

⟦(A) the present value of the cumulative accrued benefit for any employee, or

⟦(B) the amount of the account of any employee, such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 5-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.⟧

(3) DISTRIBUTIONS DURING LAST YEAR BEFORE DETERMINATION DATE TAKEN INTO ACCOUNT.—

(A) IN GENERAL.—For purposes of determining—

(i) the present value of the cumulative accrued benefit for any employee, or

(ii) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

(B) 5-YEAR PERIOD IN CASE OF IN-SERVICE DISTRIBUTION.—In the case of any distribution made for a reason other than separation from service, death, or disability, subparagraph (A) shall be applied by substituting "5-year period" for "1-year period".

(4) OTHER SPECIAL RULES.—For purposes of this subsection—

(A) * * *

* * * * * * *

(E) BENEFITS NOT TAKEN INTO ACCOUNT IF EMPLOYEE NOT EMPLOYED FOR ⟦LAST 5 YEARS⟧ *LAST YEAR BEFORE DETERMINATION DATE*.—If any individual has not performed services for the employer maintaining the plan at any time during the ⟦5⟧ *1*-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account.

* * * * * * *

(H) CASH OR DEFERRED ARRANGEMENTS USING ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—The term "top-heavy plan" shall not include a plan which consists solely of—

(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12), and

(ii) matching contributions with respect to which the requirements of section 401(m)(11) are met.

If, but for this subparagraph, a plan would be treated as a top-heavy plan because it is a member of an aggregation group which is a top-heavy group, contributions under the plan may be taken into account in determining whether any other plan in the group meets the requirements of subsection (c)(2).

* * * * * * *

(i) DEFINITIONS.—For purposes of this section—

(1) KEY EMPLOYEE.—

(A) IN GENERAL.—The term "key employee" means an employee who, at any time during the plan year ⟦or any of the 4 preceding plan years⟧, is—

⟦(i) an officer of the employer having an annual compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for any such plan year,

⟦(ii) 1 of the 10 employees having annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A) and owning (or considered as owning within the meaning of section 318 the largest interests in the employer,⟧

(i) an officer of the employer having an annual compensation greater than $150,000,

⟦(iii)⟧ *(ii)* a 5-percent owner of the employer, or

⟦(iv)⟧ *(iii)* a 1-percent owner of the employer having an annual compensation from the employer of more than $150,000.

For purposes of clause (i), no more than 50 employees (or, if lesser, the greater of 3 or 10 percent of the employees) shall be treated as officers. ⟦For purposes of clause (ii), if 2 employees have the same interest in the employer, the employee having greater annual compensation from the employer shall be treated as having a larger interest.⟧ Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans). For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(5) shall be excluded.

(B) PERCENTAGE OWNERS.—

(i) * * *

* * * * * * *

(iii) CONSTRUCTIVE OWNERSHIP RULES.—For purposes of this subparagraph ⟦and subparagraph (A)(ii)⟧—

(I) * * *

* * * * * * *

(iv) FAMILY ATTRIBUTION DISREGARDED.—Solely for purposes of applying this paragraph (and not for purposes of any provision of this title which incorporates by reference the definition of a key employee or 5-percent owner under this paragraph), section 318 shall be applied without regard to subsection (a)(1) thereof in determining whether any person is a 5-percent owner.

* * * * * * *

SEC. 417. DEFINITIONS AND SPECIAL RULES FOR PURPOSES OF MINIMUM SURVIVOR ANNUITY REQUIREMENTS.

(a) ELECTION TO WAIVE QUALIFIED JOINT AND SURVIVOR ANNUITY OR QUALIFIED PRERETIREMENT SURVIVOR ANNUITY.—

(1) * * *

* * * * * * *

(6) APPLICABLE ELECTION PERIOD DEFINED.—For purposes of this subsection, the term “applicable election period” means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the ⟦90⟧ *180*-day period ending on the annuity starting date, or

* * * * * * *

Subchapter E—Accounting Periods and Methods of Accounting

* * * * * * *

PART II—METHODS OF ACCOUNTING

* * * * * * *

Subpart B—Taxable Year for Which Items of Gross Income Included

* * * * * * *

SEC. 457. DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

⟦(a) YEAR OF INCLUSION IN GROSS INCOME.—In the case of a participant in an eligible deferred compensation plan, any amount of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary.]

(a) YEAR OF INCLUSION IN GROSS INCOME.—

(1) IN GENERAL.—Any amount of compensation deferred under an eligible deferred compensation plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income—

(A) is paid to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(A), and

(B) is paid or otherwise made available to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(B).

(2) SPECIAL RULE FOR ROLLOVER AMOUNTS.—To the extent provided in section 72(t)(9), section 72(t) shall apply to any amount includible in gross income under this subsection.

(b) ELIGIBLE DEFERRED COMPENSATION PLAN DEFINED.—For purposes of this section, the term "eligible deferred compensation plan" means a plan established and maintained by an eligible employer—

(1) in which only individuals who perform service for the employer may be participants,

(2) which provides that (except as provided in paragraph (3)) the maximum amount which may be deferred under the plan for the taxable year *(other than rollover amounts)* shall not exceed the lesser of—

(A) [$7,500] *the applicable dollar amount*, or

(B) [33⅓] *100* percent of the participant's includible compensation,

(3) which may provide that, for 1 or more of the participant's last 3 taxable years ending before he attains normal retirement age under the plan, the ceiling set forth in paragraph (2) shall be the lesser of—

(A) [$15,000] *twice the dollar amount in effect under subsection (b)(2)(A)*, or

* * * * * * *

[(c) INDIVIDUALS WHO ARE PARTICIPANTS IN MORE THAN 1 PLAN.—

[(1) IN GENERAL.—The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed $7,500 (as modified by any adjustment provided under subsection (b)(3)).

[(2) COORDINATION WITH CERTAIN OTHER DEFERRALS.—In applying paragraph (1) of this subsection—

[(A) any amount excluded from gross income under section 403(b) for the taxable year, and

[(B) any amount—

[(i) excluded from gross income under section 402(e)(3) or section 402(h)(1)(B) or (k) for the taxable year, or

[(ii) with respect to which a deduction is allowable by reason of a contribution to an organization described in section 501(c)(18) for the taxable year,

shall be treated as an amount deferred under subsection (a). In applying section 402(g)(8)(A)(iii) or 403(b)(2)(A)(ii), an amount deferred under subsection (a) for any year of service shall be taken into account as if described in section 402(g)(3)(C) or 403(b)(2)(A)(ii), respectively. Subparagraph (B) shall not apply in the case of a participant in a rural cooperative plan (as defined in section 401(k)(7)).】

(c) LIMITATION.—The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed the amount in effect under subsection (b)(2)(A) (as modified by any adjustment provided under subsection (b)(3)).

(d) DISTRIBUTION REQUIREMENTS.—

(1) IN GENERAL.—For purposes of subsection (b)(5), a plan meets the distribution requirements of this subsection if—

(A) under the plan amounts will not be made available to participants or beneficiaries earlier than—

(i) the calendar year in which the participant attains age 70½,

(ii) when the participant 【is separated from service】 *has a severance from employment* with the employer, or

(iii) when the participant is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary in regulations), 【and】

(B) the plan meets the minimum distribution requirements of paragraph (2)【.】*, and*

(C) in the case of a plan maintained by an employer described in subsection (e)(1)(A), the plan meets requirements similar to the requirements of section 401(a)(31).

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of transfer.

【(2) MINIMUM DISTRIBUTION REQUIREMENTS.—A plan meets the minimum distribution requirements of this paragraph if such plan meets the requirements of subparagraphs (A), (B), and (C):

【(A) APPLICATION OF SECTION 401(a)(9).—A plan meets the requirements of this subparagraph if the plan meets the requirements of section 401(a)(9).

【(B) ADDITIONAL DISTRIBUTION REQUIREMENTS.—A plan meets the requirements of this subparagraph if—

【(i) in the case of a distribution beginning before the death of the participant, such distribution will be made in a form under which—

【(I) the amounts payable with respect to the participant will be paid at times specified by the Secretary which are not later than the time determined under section 401(a)(9)(G) (relating to incidental death benefits), and

【(II) any amount not distributed to the participant during his life will be distributed after the death of the participant at least as rapidly as under the method of distributions being used under subclause (I) as of the date of his death, or

【(ii) in the case of a distribution which does not begin before the death of the participant, the entire amount payable with respect to the participant will be paid during a period not to exceed 15 years (or the life expectancy of the surviving spouse if such spouse is the beneficiary).

[(C) NONINCREASING BENEFITS.—A plan meets the requirements of this subparagraph if any distribution payable over a period of more than 1 year can only be made in substantially nonincreasing amounts (paid not less frequently than annually).]

(2) MINIMUM DISTRIBUTION REQUIREMENTS.—A plan meets the minimum distribution requirements of this paragraph if such plan meets the requirements of section 401(a)(9).

(3) SPECIAL RULE FOR GOVERNMENT PLAN.—An eligible deferred compensation plan of an employer described in subsection (e)(1)(A) shall not be treated as failing to meet the requirements of this subsection solely by reason of making a distribution described in subsection (e)(9)(A).

(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

[(9) BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC.—]

(9) BENEFITS OF TAX EXEMPT ORGANIZATION PLANS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC.—In the case of an eligible deferred compensation plan of an employer described in subsection (e)(1)(B)—

(A) TOTAL AMOUNT PAYABLE IS DOLLAR LIMIT OR LESS.—The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant's consent) if—

(i) [such amount] *the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D))* does not exceed the dollar limit under section 411(a)(11)(A), and

* * * * * * *

[(15) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DEFERRAL AMOUNT.—The Secretary shall adjust the $7,500 amount specified in subsections (b)(2) and (c)(1) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1994, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.]

(15) APPLICABLE DOLLAR AMOUNT.—

(A) IN GENERAL.—The applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	***The applicable dollar amount:***
2002	*$11,000*
2003	*$12,000*
2004	*$13,000*

2005	*$14,000*
2006 or thereafter	*$15,000.*

(B) COST-OF-LIVING ADJUSTMENTS.—In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under subparagraph (A) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(16) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—In the case of an eligible deferred compensation plan established and maintained by an employer described in subsection (e)(1)(A), if—

(i) any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4) without regard to subparagraph (C) thereof),

(ii) the employee transfers any portion of the property such employee receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) (other than paragraph (4)(C)) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

(C) REPORTING.—Rollovers under this paragraph shall be reported to the Secretary in the same manner as rollovers from qualified retirement plans (as defined in section 4974(c)).

(17) TRUSTEE-TO-TRUSTEE TRANSFERS TO PURCHASE PERMISSIVE SERVICE CREDIT.—No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

* * * * * * *

Subchapter F—Exempt Organizations

* * * * * * *

PART I—GENERAL RULE

* * * * * * *

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) * * *

* * * * * * *

(c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):

(1) * * *

* * * * * * *

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) * * *

* * * * * * *

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) * * *

* * * * * * *

(iii) such contributions are treated as elective deferrals for purposes of section 402(g) **[**(other than paragraph (4) thereof)**]**, and

* * * * * * *

SEC. 505. ADDITIONAL REQUIREMENTS FOR ORGANIZATIONS DESCRIBED IN PARAGRAPH (9), (17), OR (20) OF SECTION 501(c).

(a) * * *

(b) NONDISCRIMINATION REQUIREMENTS.—

(1) * * *

* * * * * * *

(7) COMPENSATION LIMIT.—A plan shall not be treated as meeting the requirements of this subsection unless under the plan the annual compensation of each employee taken into account for any year does not exceed **[**$150,000**]** *$200,000*. The Secretary shall adjust the **[**$150,000**]** *$200,000* amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B). This paragraph shall not apply in determining whether the requirements of section 79(d) are met.

* * * * * * *

Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

* * * * * * *

PART I—ESTATES, TRUSTS, AND BENEFICIARIES

* * * * * * *

Subpart C—Estates and Trusts Which May Accumulate Income or Which Distribute Corpus

* * * * * * *

SEC. 664. CHARITABLE REMAINDER TRUSTS.

(a) * * *

* * * * * * *

(g) QUALIFIED GRATUITOUS TRANSFER OF QUALIFIED EMPLOYER SECURITIES.—

(1) * * *

* * * * * * *

(3) PLAN REQUIREMENTS.—A plan contains the provisions required by this paragraph if such plan provides that—

(A) * * *

* * * * * * *

(E) such securities are held in a suspense account under the plan to be allocated each year, up to the [limitations under section 415(c)] *applicable limitation under paragraph (7)*, after first allocating all other annual additions for the limitation year, up to the limitations under sections 415 (c) and (e), and

* * * * * * *

(7) APPLICABLE LIMITATION.—

(A) IN GENERAL.—For purposes of paragraph (3)(E), the applicable limitation under this paragraph with respect to a participant is an amount equal to the lesser of—

(i) $30,000, or

(ii) 25 percent of the participant's compensation (as defined in section 415(c)(3)).

(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the $30,000 amount under subparagraph (A)(i) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1993, and any increase under this subparagraph which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

* * * * * * *

Subtitle C—Employment Taxes

* * * * * * *

CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

* * * * * * *

Subchapter A—Withholding from Wages

* * * * * * *

SEC. 3401. DEFINITIONS.

(a) WAGES.—For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) * * *

* * * * * * *

(12) to, or on behalf of, an employee or his beneficiary—

(A) * * *

* * * * * * *

(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457(b) maintained by an employer described in section 457(e)(1)(A); or

* * * * * * *

SEC. 3405. SPECIAL RULES FOR PENSIONS, ANNUITIES, AND CERTAIN OTHER DEFERRED INCOME.

(a) * * *

* * * * * * *

(c) ELIGIBLE ROLLOVER DISTRIBUTIONS.—

(1) * * *

* * * * * * *

[(3) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this subsection, the term "eligible rollover distribution" has the meaning given such term by section 402(f)(2)(A) (or in the case of an annuity contract under section 403(b), a distribution from such contract described in section 402(f)(2)(A)).]

(3) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this subsection, the term "eligible rollover distribution" has the meaning given such term by section 402(f)(2)(A).

(d) LIABILITY FOR WITHHOLDING.—

(1) * * *

(2) PLAN ADMINISTRATOR LIABLE IN CERTAIN CASES.—

(A) * * *

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph applies to any plan described in, or which at any time has been determined to be described in—

(i) section 401(a),

(ii) section 403(a), [or]

(iii) section 301(d) of the Tax Reduction Act of 1975[.]*, or*

(iv) section 457(b) and which is maintained by an eligible employer described in section 457(e)(1)(A).

* * * * * * *

Subtitle D—Miscellaneous Excise Taxes

* * * * * * *

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

* * * * * * *

Sec. 4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements.

* * * * * * *

SEC. 4972. TAX ON NONDEDUCTIBLE CONTRIBUTIONS TO QUALIFIED EMPLOYER PLANS.

(a) * * *

* * * * * * *

(c) NONDEDUCTIBLE CONTRIBUTIONS.—For purposes of this section—

(1) * * *

* * * * * * *

⟦(6) EXCEPTIONS.—In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account—

⟦(A) contributions that would be deductible under section 404(a)(1)(D) if the plan had more than 100 participants if—

⟦(i) the plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, and

⟦(ii) the plan is terminated under section 4041(b) of such Act on or before the last day of the taxable year, and

⟦(B) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

⟦(i) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or⟧

(6) EXCEPTIONS.—In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account so much of the contributions to one or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

(A) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans,

(B) the sum of—

(i) the amount of contributions described in section 401(m)(4)(A), plus

(ii) the amount of contributions described in section 402(g)(3)(A), and

(C) so much of the contributions to a simple retirement account (within the meaning of section 408(p)) or a simple plan (within the meaning of section 401(k)(11)) which are not deductible when contributed solely because such contributions are not made in connection with a trade or business of the employer.

For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (B). Subparagraph (C) shall not apply to contributions made on behalf of the employer or a member of the employer's family.

(7) DEFINED BENEFIT PLAN EXCEPTION.—In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof). For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph. If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.

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SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO CERTAIN TAX-FAVORED ACCOUNTS AND ANNUITIES.

(a) * * *

(b) EXCESS CONTRIBUTIONS.—For purposes of this section, in the case of individual retirement accounts or individual retirement annuities, the term "excess contributions" means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to the accounts or for the annuities (other than a contribution to a Roth IRA or a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), ⟦or 408(d)(3)⟧ *408(d)(3), or 457(e)(16)*), over

* * * * * * *

SEC. 4974. EXCISE TAX ON CERTAIN ACCUMULATIONS IN QUALIFIED RETIREMENT PLANS.

(a) GENERAL RULE.—If the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to ⟦50⟧ *10* percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year. The tax imposed by this section shall be paid by the payee.

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SEC. 4975. TAX ON PROHIBITED TRANSACTIONS.

(a) * * *

* * * * * * *

(e) DEFINITIONS.—

(1) * * *

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(7) EMPLOYEE STOCK OWNERSHIP PLAN.—The term "employee stock ownership plan" means a defined contribution plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and

(B) which is otherwise defined in regulations prescribed by the Secretary.

A plan shall not be treated as an employee stock ownership plan unless it meets the requirements of section 409(h), section 409(o), and, if applicable, section 409(n)*, section 409(p),* and section 664(g) and, if the employer has a registration-type class of securities (as defined in section 409(e)(4)), it meets the requirements of section 409(e).

* * * * * * *

(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(6) EXEMPTIONS NOT TO APPLY TO CERTAIN TRANSACTIONS.—

(A) * * *

(B) SPECIAL RULES FOR SHAREHOLDER-EMPLOYEES, ETC.—

(i) * * *

* * * * * * *

(iii) LOAN EXCEPTION.—For purposes of subparagraph (A)(i), the term "owner-employee" shall only include a person described in subclause (II) or (III) of clause (i).

* * * * * * *

SEC. 4979A. TAX ON CERTAIN PROHIBITED ALLOCATIONS OF QUALIFIED SECURITIES.

(a) IMPOSITION OF TAX.—If—

(1) there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative, ⟦or⟧

(2) there is an allocation described in section 664(g)(5)(A), there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.

⟦there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.⟧

(3) there is any allocation of employer securities which violates the provisions of section 409(p), or a nonallocation year described in subsection (e)(2)(C) with respect to an employee stock ownership plan, or

(4) any synthetic equity is owned by a disqualified person in any nonallocation year,

there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.

* * * * * * *

⟦(c) LIABILITY FOR TAX.—The tax imposed by this section shall be paid by—

⟦(1) the employer sponsoring such plan, or

⟦(2) the eligible worker-owned cooperative, which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be).]

(c) LIABILITY FOR TAX.—The tax imposed by this section shall be paid—

(1) in the case of an allocation referred to in paragraph (1) or (2) of subsection (a), by—

(A) the employer sponsoring such plan, or

(B) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be), and

(2) in the case of an allocation or ownership referred to in paragraph (3) or (4) of subsection (a), by the S corporation the stock in which was so allocated or owned.

* * * * * * *

[(e) DEFINITIONS.—Terms used in this section have the same respective meaning as when used in section 4978.]

(e) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) DEFINITIONS.—Except as provided in paragraph (2), terms used in this section have the same respective meanings as when used in sections 409 and 4978.

(2) SPECIAL RULES RELATING TO TAX IMPOSED BY REASON OF PARAGRAPH (3) OR (4) OF SUBSECTION (a).—

(A) PROHIBITED ALLOCATIONS.—The amount involved with respect to any tax imposed by reason of subsection (a)(3) is the amount allocated to the account of any person in violation of section 409(p)(1).

(B) SYNTHETIC EQUITY.—The amount involved with respect to any tax imposed by reason of subsection (a)(4) is the value of the shares on which the synthetic equity is based.

(C) SPECIAL RULE DURING FIRST NONALLOCATION YEAR.—For purposes of subparagraph (A), the amount involved for the first nonallocation year of any employee stock ownership plan shall be determined by taking into account the total value of all the deemed-owned shares of all disqualified persons with respect to such plan.

(D) STATUTE OF LIMITATIONS.—The statutory period for the assessment of any tax imposed by this section by reason of paragraph (3) or (4) of subsection (a) shall not expire before the date which is 3 years from the later of—

(i) the allocation or ownership referred to in such paragraph giving rise to such tax, or

(ii) the date on which the Secretary is notified of such allocation or ownership.

* * * * * * *

SEC. 4980F. FAILURE OF APPLICABLE PLANS REDUCING BENEFIT ACCRUALS TO SATISFY NOTICE REQUIREMENTS.

(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

(b) AMOUNT OF TAX.—

(1) In general.—The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be $100 for each day in the noncompliance period with respect to such failure.

(2) Noncompliance period.—For purposes of this section, the term "noncompliance period" means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the notice to which the failure relates is provided or the failure is otherwise corrected.

(c) Limitations on Amount of Tax.—

(1) Tax not to apply where failure not discovered and reasonable diligence exercised.—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for the tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

(2) Tax not to apply to failures corrected within 30 days.—No tax shall be imposed by subsection (a) on any failure if—

(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

(B) such person provides the notice described in subsection (e) during the 30-day period beginning on the first date such person knew, or exercising reasonable diligence would have known, that such failure existed.

(3) Overall limitation for unintentional failures.—

(A) In general.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

(B) Taxable years in the case of certain controlled groups.—For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

(4) Waiver by Secretary.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

(d) Liability for Tax.—The following shall be liable for the tax imposed by subsection (a):

(1) In the case of a plan other than a multiemployer plan, the employer.

(2) In the case of a multiemployer plan, the plan.

(e) Notice Requirements for Plans Significantly Reducing Benefit Accruals.—

(1) IN GENERAL.—If an applicable pension plan is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide written notice to each applicable individual (and to each employee organization representing applicable individuals).

(2) NOTICE.—The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

(3) TIMING OF NOTICE.—Except as provided in regulations, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

(4) DESIGNEES.—Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(5) NOTICE BEFORE ADOPTION OF AMENDMENT.—A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) APPLICABLE INDIVIDUAL.—The term "applicable individual" means, with respect to any plan amendment—

(A) each participant in the plan, and

(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(2) APPLICABLE PENSION PLAN.—The term "applicable pension plan" means—

(A) any defined benefit plan, or

(B) an individual account plan which is subject to the funding standards of section 412.

Such term shall not include a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

(3) EARLY RETIREMENT.—A plan amendment which eliminates or significantly reduces any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) shall be treated as having the effect of significantly reducing the rate of future benefit accrual.

(g) NEW TECHNOLOGIES.—The Secretary may by regulations allow any notice under subsection (e) to be provided by using new technologies.

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Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

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Subpart B—Information Concerning Transactions with Other Persons

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SEC. 6047. INFORMATION RELATING TO CERTAIN TRUSTS AND ANNUITY PLANS.

(a) * * *

* * * * * * *

(f) DESIGNATED PLUS CONTRIBUTIONS.—The Secretary shall require the plan administrator of each applicable retirement plan (as defined in section 402A) to make such returns and reports regarding designated plus contributions (as so defined) to the Secretary, participants and beneficiaries of the plan, and such other persons as the Secretary may prescribe.

[(f)**]** *(g)* CROSS REFERENCES.—

(1) For provisions relating to penalties for failures to file returns and reports required under this section, see sections 6652(e), 6721, and 6722.

(2) For criminal penalty for furnishing fraudulent information, see section 7207.

(3) For provisions relating to penalty for failure to comply with the provisions of subsection (d), see section 6704.

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Subpart C—Information Regarding Wages Paid Employees

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SEC. 6051. RECEIPTS FOR EMPLOYEES.

(a) REQUIREMENT.—Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been required to deduct and withhold a tax under section 3402 (determined without regard to subsection (n)) if the employee had claimed no more than one withholding exemption, or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, within 30 days after the date of receipt of a written request from the employee if such 30-day period ends before January 31, a written statement showing the following:

(1) * * *

* * * * * * *

(8) the total amount of elective deferrals (within the meaning of section 402(g)(3)) and compensation deferred under section 457*, including the amount of designated plus contributions (as defined in section 402A)*,

* * * * * * *

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

* * * * * * *

SUBTITLE B—REGULATORY PROVISIONS

PART 1—REPORTING AND DISCLOSURE

* * * * * * *

FILING WITH SECRETARY AND FURNISHING INFORMATION TO PARTICIPANTS

SEC. 104. (a) * * *

(b) Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) * * *

* * * * * * *

(3) Within 210 days after the close of the fiscal year of the plan, the administrators shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 103(b)(3) and such other material (including the percentage determined under section 103(d)(11)) as is necessary to fairly summarize the latest annual report. *The requirement to furnish information under the previous sentence shall be satisfied if the administrator makes such information reasonably available through electronic means or other new technology.*

* * * * * * *

REPORTING OF PARTICIPANT'S BENEFIT RIGHTS

SEC. 105. ⟦(a) Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information—

⟦(1) the total benefits accrued, and

⟦(2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

⟦(b) In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) during any one 12-month period.⟧

(a)(1) Except as provided in paragraph (2)—

(A) the administrator of an individual account plan shall furnish a pension benefit statement—

(i) to a plan participant at least once annually, and

(ii) to a plan beneficiary upon written request, and

(B) the administrator of a defined benefit plan shall furnish a pension benefit statement—

(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is furnished to participants, and

(ii) to a plan participant or plan beneficiary of the plan upon written request.

(2) Notwithstanding paragraph (1), the administrator of a plan to which more than 1 unaffiliated employer is required to contribute shall only be required to furnish a pension benefit statement under paragraph (1) upon the written request of a participant or beneficiary of the plan.

(3) A pension benefit statement under paragraph (1)—

(A) shall indicate, on the basis of the latest available information—

(i) the total benefits accrued, and

(ii) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

(B) shall be written in a manner calculated to be understood by the average plan participant, and

(C) may be provided in written, electronic, telephonic, or other appropriate form.

(4)(A) In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if the administrator provides the participant at least once each year with notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, telephonic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.

(B) The Secretary may provide that years in which no employee or former employee benefits (within the meaning of section 410(b) of the Internal Revenue Code of 1986) under the plan need not be

taken into account in determining the 3-year period under paragraph (1)(B)(i).

(b) In no case shall a participant or beneficiary of a plan be entitled to more than one statement described in subsection (a)(1)(A) or (a)(1)(B)(ii), whichever is applicable, in any 12-month period.

* * * * * * *

❲(d) Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury.❳

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PART 2—PARTICIPATION AND VESTING

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MINIMUM VESTING STANDARDS

SEC. 203. (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) * * *

(2) ❲A plan❳ *Except as provided in paragraph (4), a plan* satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A) or (B).

(A) * * *

* * * * * * *

(4) In the case of matching contributions (as defined in section 401(m)(4)(A) of the Internal Revenue Code of 1986), paragraph (2) shall be applied—

(A) by substituting "3 years" for "5 years" in subparagraph (A), and

(B) by substituting the following table for the table contained in subparagraph (B):

Years of service:	***The nonforfeitable percentage is:***
2	*20*
3	*40*
4	*60*
5	*80*
6	*100.*

* * * * * * *

(e)(1) * * *

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(4) A plan shall not fail to meet the requirements of this subsection if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term "rollover contributions" means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Internal Revenue Code of 1986.

BENEFIT ACCRUAL REQUIREMENTS

SEC. 204. (a) * * *

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(g)(1) * * *

(2) For purposes of paragraph (1), a plan amendment which has the effect of—

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. *The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants and does not adversely affect the rights of any participant in a more than de minimis manner.* The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

* * * * * * *

(4)(A) A defined contribution plan (in this subparagraph referred to as the "transferee plan") shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the "transferor plan") to the extent that—

(i) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan;

(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i);

(iii) the transfer described in clause (i) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan;

(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election; and

(v) the transferee plan allows the participant or beneficiary described in clause (iii) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

(B) Subparagraph (A) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

(5) Except to the extent provided in regulations promulgated by the Secretary of the Treasury, a defined contribution plan shall not be treated as failing to meet the requirements of this subsection merely because of the elimination of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

(A) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated; and

(B) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.

(h)(1) * * *

* * * * * * *

(3)(A) An applicable pension plan to which paragraph (1) applies shall not be treated as meeting the requirements of such paragraph unless, in addition to any notice required to be provided to an individual or organization under such paragraph, the plan administrator provides the notice described in subparagraph (B) to each applicable individual (and to each employee organization representing applicable individuals).

(B) The notice required by subparagraph (A) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary of the Treasury) to allow applicable individuals to understand the effect of the plan amendment. The Secretary of the Treasury may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(i) which has fewer than 100 participants who have accrued a benefit under the plan, or

(ii) which offers participants the option to choose between the new benefit formula and the old benefit formula.

(C) Except as provided in regulations prescribed by the Secretary of the Treasury, the notice required by subparagraph (A) shall be provided within a reasonable time before the effective date of the plan amendment.

(D) Any notice under subparagraph (A) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(E) A plan shall not be treated as failing to meet the requirements of subparagraph (A) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

(F) The Secretary of the Treasury may by regulations allow any notice under this paragraph to be provided by using new technologies.

(4) For purposes of paragraph (3)—

(A) The term "applicable individual" means, with respect to any plan amendment—

(i) each participant in the plan; and

(ii) any beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable quali-

fied domestic relations order (within the meaning of section 206(d)(3)(B)(i)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(B) The term "applicable pension plan" means—

(i) any defined benefit plan; or

(ii) an individual account plan which is subject to the funding standards of section 412 of the Internal Revenue Code of 1986.

(C) A plan amendment which eliminates or significantly reduces any early retirement benefit or retirement-type subsidy (within the meaning of subsection (g)(2)(A)) shall be treated as having the effect of significantly reducing the rate of future benefit accrual.

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REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY

SEC. 205. (a) * * *

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(c)(1) * * *

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(7) For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the [90-day] *180-day* period ending on the annuity starting date, or

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PART 3—FUNDING

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MINIMUM FUNDING STANDARDS

SEC. 302. (a) * * *

(c)(1) * * *

* * * * * * *

(7) FULL-FUNDING LIMITATION.—

(A) IN GENERAL.—For purposes of paragraph (6), the term "full-funding limitation" means the excess (if any) of—

(i) the lesser of (I) [the applicable percentage] *in the case of plan years beginning before January 1, 2004, the applicable percentage* of current liability (including the expected increase in current liability due to benefits accruing during the plan year), or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

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[(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

[In the case of any plan year beginning in—	**The applicable percentage is—**
1999 or 2000	155
2001 or 2002	160
2003 or 2004	165
2005 and succeeding years	170.]

(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

In the case of any plan year beginning in—	***The applicable percentage is—***
2002	*165*
2003	*170.*

* * * * * * *

(9)*(A)* For purposes of this part, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(B)(i) Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if—

(I) an election is in effect under this clause with respect to the plan; and

(II) as of such date, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

(iii) Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) An election under clause (ii), once made, shall be irrevocable without the consent of the Secretary of the Treasury.

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PART 4—FIDUCIARY RESPONSIBILITY

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EXEMPTIONS FROM PROHIBITED TRANSACTIONS

SEC. 408. (a) * * *

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(d)(1) * * *
(2)(A) * * *

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(C) For purposes of paragraph (1)(A), the term "owner-employee" shall only include a person described in clause (ii) or (iii) of subparagraph (A).

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PART 5—ADMINISTRATION AND ENFORCEMENT

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CIVIL ENFORCEMENT

SEC. 502. (a) * * *

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(l)(1) In the case of—

(A) any breach of fiduciary responsibility under (or other violation of) part 4 by a fiduciary, or

(B) any knowing participation in such a breach or violation by any other person,

the Secretary ❲shall❳ *may* assess a civil penalty against such fiduciary or other person in an amount ❲equal to❳ *not greater than* 20 percent of the applicable recovery amount.

❲(2) For purposes of paragraph (1), the term "applicable recovery amount" means any amount which is recovered from a fiduciary or other person with respect to a breach or violation described in paragraph (1)—

❲(A) pursuant to any settlement agreement with the Secretary, or

❲(B) ordered by a court to be paid by such fiduciary or other person to a plan or its participants and beneficiaries in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5).❳

(2) For purposes of paragraph (1), the term "applicable recovery amount" means any amount which is recovered from any fiduciary or other person (or from any other person on behalf of any such fiduciary or other person) with respect to a breach or violation described in paragraph (1) on or after the 30th day following receipt by such fiduciary or other person of written notice from the Secretary of the violation, whether paid voluntarily or by order of a court in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5). The Secretary may, in the Secretary's sole discretion, extend the 30-day period described in the preceding sentence.

* * * * * * *

(5) A person shall be jointly and severally liable for the penalty described in paragraph (1) to the same extent that such person is jointly and severally liable for the applicable recovery amount on which the penalty is based.

(6) No penalty shall be assessed under this subsection unless the person against whom the penalty is assessed is given notice and opportunity for a hearing with respect to the violation and applicable recovery amount.

* * * * * * *

NATIONAL SUMMIT ON RETIREMENT SAVINGS

SEC. 517. (a) AUTHORITY TO CALL SUMMIT.—Not later than July 15, 1998, the President shall convene a National Summit on Retirement Income Savings at the White House, to be co-hosted by the President and the Speaker and the Minority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate. Such a National Summit shall be convened thereafter in ⟦2001 and 2005 on or after September 1 of each year involved⟧ *2001, 2005, and 2009 in the month of September of each year involved*. Such a National Summit shall—

(1) * * *

* * * * * * *

(b) PLANNING AND DIRECTION.—The National Summit shall be planned and conducted under the direction of the Secretary, in consultation with, and with the assistance of, the heads of such other Federal departments and agencies as the President may designate. Such assistance may include the assignment of personnel. The Secretary shall, in planning and conducting the National Summit, consult with the congressional leaders specified in subsection (e)(2). The Secretary shall also, in carrying out the Secretary's duties under this subsection, consult and coordinate with at least one organization made up of private sector businesses and associations partnered with Government entities to promote long-term financial security in retirement through savings. *To effectuate the purposes of this paragraph, the Secretary may enter into a cooperative agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301 et seq.), with the American Savings Education Council.*

* * * * * * *

(e) NATIONAL SUMMIT PARTICIPANTS.—

(1) * * *

(2) STATUTORILY REQUIRED PARTICIPATION.—The participants in the National Summit shall include the following individuals or their designees:

(A) * * *

* * * * * * *

(D) the Chairman and ranking Member of the ⟦Committee on Labor and Human Resources⟧ *Committee on Health, Education, Labor, and Pensions* of the Senate;

(E) * * *

⟦(F) the Chairman and ranking Member of the Subcommittees on Labor, Health and Human Services, and Education of the Senate and House of Representatives; and⟧

(F) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;

(G) the Chairman and Ranking Member of the Committee on Finance of the Senate;

(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;

(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and

【(G)】 *(J)* the parties referred to in subsection (b).

(3) ADDITIONAL PARTICIPANTS.—

(A) IN GENERAL.—【There shall be not more than 200 additional participants.】 *The participants in the National Summit shall also include additional participants appointed under this subparagraph.* Of such additional participants—

(i) 【one-half shall be appointed by the President,】 *not more than 100 participants shall be appointed under this clause by the President,* in consultation with the elected leaders of the President's party in Congress (either the Speaker of the House of Representatives or the Minority Leader of the House of Representatives, and either the Majority Leader or the Minority Leader of the Senate; 【and】

(ii) 【one-half shall be appointed by the elected leaders of Congress】 *not more than 100 participants shall be appointed under this clause by the elected leaders of Congress* of the party to which the President does not belong (one-half of that allotment to be appointed by either the Speaker of the House of Representatives or the Minority Leader of the House of Representatives, and one-half of that allotment to be appointed by either the Majority Leader or the Minority Leader of the Senate)【.】*; and*

(iii) The President, in consultation with the elected leaders of Congress referred to in subsection (a), may appoint under this clause additional participants to the National Summit. The number of such additional participants appointed under this clause may not exceed the lesser of 3 percent of the total number of all additional participants appointed under this paragraph, or 10. Such additional participants shall be appointed from persons nominated by the organization referred to in subsection (b)(2) which is made up of private sector businesses and associations partnered with Government entities to promote long term financial security in retirement through savings and with which the Secretary is required thereunder to consult and cooperate and shall not be Federal, State, or local government employees.

(B) APPOINTMENT REQUIREMENTS.—The additional participants described in subparagraph (A) shall be—

(i) appointed not later than 【January 31, 1998】 *May 1, 2001, May 1, 2005, and May 1, 2009, for each of the subsequent summits, respectively*;

* * * * * * *

(f) NATIONAL SUMMIT ADMINISTRATION.—

(1) ADMINISTRATION.—In administering this section, the Secretary shall—

(A) * * *

*　*　*　*　*　*　*

(C) make available for public comment*, no later than 90 days prior to the date of the commencement of the National Summit,* a proposed agenda for the National Summit that reflects to the greatest extent possible the purposes for the National Summit set out in this section;

*　*　*　*　*　*　*

(g) REPORT.—The Secretary shall prepare a report*, in consultation with the congressional leaders specified in subsection (e)(2),* describing the activities of the National Summit and shall submit the report to the President, the Speaker and Minority Leader of the House of Representatives, the Majority and Minority Leaders of the Senate, and the chief executive officers of the States not later than 90 days after the date on which the National Summit is adjourned.

*　*　*　*　*　*　*

(i) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated for fiscal years ⟦beginning on or after October 1, 1997⟧ *2001, 2005, and 2009*, such sums as are necessary to carry out this section.

*　*　*　*　*　*　*

(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions accepted in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph.

*　*　*　*　*　*　*

(k) CONTRACTS.—The Secretary may enter into contracts to carry out the Secretary's responsibilities under this section. The Secretary ⟦shall enter into a contract on a sole-source basis⟧ *may enter into a contract on a sole-source basis* to ensure the timely completion of the National Summit in ⟦fiscal year 1998⟧ *fiscal years 2001, 2005, and 2009*.

*　*　*　*　*　*　*

TITLE IV—PLAN TERMINATION INSURANCE

SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION

*　*　*　*　*　*　*

PREMIUM RATES

SEC. 4006. (a)(1) * * *

*　*　*　*　*　*　*

(3)(A) Except as provided in subparagraph (C), the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this title is—

(i) in the case of a single-employer plan, *other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined),* for plan years beginning after December 31, 1990, an amount equal to the sum of $19 plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;

* * * * * * *

(iii) in the case of a multiemployer plan, for plan years beginning after the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980, an amount equal to—

(I) $1.40 for each participant, for the first, second, third, and fourth plan years,

(II) $1.80 for each participant, for the fifth and sixth plan years,

(III) $2.20 for each participant, for the seventh and eighth plan years, and

(IV) $2.60 for each participant, for the ninth plan year, and for each succeeding plan year**[**.**]***, and*

(iv) in the case of a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined) for the plan year, $5 for each individual who is a participant in such plan during the plan year.

* * * * * * *

(E)(i) **[**The**]** *Except as provided in subparagraph (G), the* additional premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

* * * * * * *

(v) In the case of a new defined benefit plan, the amount determined under clause (ii) for any plan year shall be an amount equal to the product of the amount determined under clause (ii) and the applicable percentage. For purposes of this clause, the term "applicable percentage" means—

(I) 0 percent, for the first plan year.

(II) 20 percent, for the second plan year.

(III) 40 percent, for the third plan year.

(IV) 60 percent, for the fourth plan year.

(V) 80 percent, for the fifth plan year.

For purposes of this clause, a defined benefit plan (as defined in section 3(35)) maintained by a contributing sponsor shall be treated as a new defined benefit plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of the plan, the sponsor and each member of any controlled group including the sponsor (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new plan.

(F)(i) For purposes of this paragraph, a single-employer plan maintained by a contributing sponsor shall be treated as a new single-employer plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of such plan, the

sponsor or any member of such sponsor's controlled group (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new single-employer plan.

(ii)(I) For purposes of this paragraph, the term "small employer" means an employer which on the first day of any plan year has, in aggregation with all members of the controlled group of such employer, 100 or fewer employees.

(II) In the case of a plan maintained by two or more contributing sponsors that are not part of the same controlled group, the employees of all contributing sponsors and controlled groups of such sponsors shall be aggregated for purposes of determining whether any contributing sponsor is a small employer.

(G)(i) In the case of an employer who has 25 or fewer employees on the first day of the plan year, the additional premium determined under subparagraph (E) for each participant shall not exceed $5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

(ii) For purposes of clause (i), whether an employer has 25 or fewer employees on the first day of the plan year is determined taking into consideration all of the employees of all members of the contributing sponsor's controlled group. In the case of a plan maintained by two or more contributing sponsors, the employees of all contributing sponsors and their controlled groups shall be aggregated for purposes of determining whether the 25-or-fewer-employees limitation has been satisfied.

PAYMENT OF PREMIUMS

SEC. 4007. (a) * * *

(b)*(1)* If any basic benefit premium is not paid when it is due the corporation is authorized to assess a late payment charge of not more than 100 percent of the premium payment which was not timely paid. The preceding sentence shall not apply to any payment of premium made within 60 days after the date on which payment is due, if before such date, the designated payor obtains a waiver from the corporation based upon a showing of substantial hardship arising from the timely payment of the premium. The corporation is authorized to grant a waiver under this subsection upon application made by the designated payor, but the corporation may not grant a waiver if it appears that the designated payor will be unable to pay the premium within 60 days after the date on which it is due. If any premium is not paid by the last date prescribed for a payment, interest on the amount of such premium at the rate imposed under section 6601(a) of the Internal Revenue Code of 1986 (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) shall be paid for the period from such last date to the date paid.

(2) The corporation is authorized to pay, subject to regulations prescribed by the corporation, interest on the amount of any overpayment of premium refunded to a designated payor. Interest under this paragraph shall be calculated at the same rate and in the same

manner as interest is calculated for underpayments under paragraph (1).

*　*　*　*　*　*　*

Subtitle B—Coverage

PLANS COVERED

SEC. 4021. (a) * * *

(b) This section does not apply to any plan—

(1) * * *

*　*　*　*　*　*　*

(9) which is established and maintained exclusively for substantial owners ⟦as defined in section 4022(b)(6)⟧;

*　*　*　*　*　*　*

(d) For purposes of subsection (b)(9), the term "substantial owner" means an individual who, at any time during the 60-month period ending on the date the determination is being made—

(1) owns the entire interest in an unincorporated trade or business,

(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of paragraph (3), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).

SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED

SEC. 4022. (a) * * *

(b)(1) * * *

*　*　*　*　*　*　*

⟦(5)(A) For purposes of this title, the term "substantial owner" means an individual who—

⟦(i) owns the entire interest in an unincorporated trade or business,

⟦(ii) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

⟦(iii) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii) the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)). For purposes of this title an individual is also treated as a substantial owner with respect to a plan if, at any time within the 60 months preceding the date on which the determination is made, he was a substantial owner under the plan.

⟦(B) In the case of a participant in a plan under which benefits have not been increased by reason of any plan amendments and who is covered by the plan as a substantial owner, the amount of benefits guaranteed under this section shall not exceed the product of—

⟦(i) a fraction (not to exceed 1) the numerator of which is the number of years the substantial owner was an active participant in the plan, and the denominator of which is 30, and

⟦(ii) the amount of the substantial owner's monthly benefits guaranteed under subsection (a) (as limited under paragraph (3) of this subsection).

⟦(C) In the case of a participant in a plan, other than a plan described in subparagraph (B), who is covered by the plan as a substantial owner, the amount of the benefit guaranteed under this section shall, under regulations prescribed by the corporation, treat each benefit increase attributable to a plan amendment as if it were provided under a new plan. The benefits guaranteed under this section with respect to all such amendments shall not exceed the amount which would be determined under subparagraph (B) if subparagraph (B) applied.⟧

(5)(A) For purposes of this paragraph, the term "majority owner" means an individual who, at any time during the 60-month period ending on the date the determination is being made—

(i) owns the entire interest in an unincorporated trade or business,

(ii) in the case of a partnership, is a partner who owns, directly or indirectly, 50 percent or more of either the capital interest or the profits interest in such partnership, or

(iii) in the case of a corporation, owns, directly or indirectly, 50 percent or more in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).

(B) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall equal the product of—

(i) a fraction (not to exceed 1) the numerator of which is the number of years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10, and

(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.

* * * * * * *

Subtitle C—Terminations

* * * * * * *

REPORTABLE EVENTS

SEC. 4043. (a) * * *

* * * * * * *

(c) For purposes of this section a reportable event occurs—

(1) * * *

*   *   *   *   *   *   *

(7) when there is a distribution under the plan to a participant who is a substantial owner as defined in section ⟦4022(b)(6)⟧ *4021(d)* if—

(A) * * *

*   *   *   *   *   *   *

ALLOCATION OF ASSETS

SEC. 4044. (a) In the case of the termination of a single-employer plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order:

(1) * * *

*   *   *   *   *   *   *

(4) Fourth—

(A) * * *

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section ⟦4022(b)(5)⟧ *4022(b)(5)(B)* did not apply.

For purposes of this paragraph, section 4021 shall be applied without regard to subsection (c) thereof.

(b) For purposes of subsection (a)—

(1) * * *

(2) If the assets available for allocation under any paragraph of subsection (a) (other than paragraphs ⟦(5)⟧ *(4), (5),* and (6)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.

(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.

⟦(3)⟧ *(4)* This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) are not sufficient to satisfy in full the benefits of individuals described in that paragraph.

*   *   *   *   *   *   *

⟦(4)⟧ *(5)* If the Secretary of the Treasury determines that the allocation made pursuant to this section (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of the Internal Revenue Code of 1986 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 401(a) or 403(a) of such Code, the assets allocated under subsections (a)(4)(B), (a)(5), and (a)(6) shall be reallocated to the extent necessary to avoid such discrimination.

⟦(5)⟧ *(6)* The term "mandatory contributions" means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. For this purpose, the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan before its termination.

⟦(6)⟧ *(7)* A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) in accordance with regulations prescribed by the corporation.

* * * * * * *

SEC. 4050. MISSING PARTICIPANTS.

(a) * * *

* * * * * * *

(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant's benefits to the corporation upon termination of the plan.

(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

(A) to the corporation, or

(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

(A) in a single sum (plus interest), or

(B) in such other form as is specified in regulations of the corporation.

(4) PLANS DESCRIBED.—A plan is described in this paragraph if—

(A) the plan is a pension plan (within the meaning of section 3(2))—

(i) to which the provisions of this section do not apply (without regard to this subsection), and

(ii) which is not a plan described in paragraphs (2) through (11) of section 4021(b), and

(B) at the time the assets are to be distributed upon termination, the plan—

(i) has missing participants, and

(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

(5) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).

【(c)】 *(e)* REGULATORY AUTHORITY.—The corporation shall prescribe such regulations as are necessary to carry out the purposes of this section, including rules relating to what will be considered a diligent search, the amount payable to the corporation, and the amount to be paid by the corporation.

* * * * * * *

TAXPAYER RELIEF ACT OF 1997

* * * * * * *

TITLE XV—PENSIONS AND EMPLOYEE BENEFITS

Subtitle A—Simplification

* * * * * * *

SEC. 1505. EXTENSION OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES TO STATE AND LOCAL GOVERNMENTS.

(a) * * *

* * * * * * *

(d) EFFECTIVE DATES.—

(1) * * *

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) 【maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)】 shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403 (b)(1)(D) and (b)(12)(A)(i), and 410 of such Code for all taxable years beginning before the date of enactment of this Act.

* * * * * * *

Subtitle B—Other Provisions Relating to Pensions and Employee Benefits

* * * * * * *

SEC. 1524. DIVERSIFICATION OF SECTION 401(k) PLAN INVESTMENTS.

(a) * * *

* * * * * * *

[(b) EFFECTIVE DATE.—The amendments made by this section shall apply to elective deferrals for plan years beginning after December 31, 1998.]

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to elective deferrals for plan years beginning after December 31, 1998.

(2) NONAPPLICATION TO PREVIOUSLY ACQUIRED PROPERTY.—The amendments made by this section shall not apply to any elective deferral which is invested in assets consisting of qualifying employer securities, qualifying employer real property, or both, if such assets were acquired before January 1, 1999.

* * * * * * *

SECTION 1114 OF THE TAX REFORM ACT OF 1986

SEC. 1114. DEFINITION OF HIGHLY COMPENSATED EMPLOYEE.

(a) * * *

* * * * * * *

(c) EFFECTIVE DATE.—

(1) * * *

* * * * * * *

[(4) SPECIAL RULE FOR DETERMINING HIGHLY COMPENSATED EMPLOYEES.—For purposes of sections 401(k) and 401(m) of the Internal Revenue Code of 1986, in the case of an employer incorporated on December 15, 1924, if more than 50 percent of its employees in the top-paid group (within the meaning of section 414(q)(4) of such Code) earn less than $25,000 (indexed at the same time and in the same manner as under section 415(d) of such Code), then the highly compensated employees shall include employees described in section 414(q)(1)(C) of such Code determined without regard to the level of compensation of such employees. Any reference in this paragraph to section 414(q) shall be treated as a reference to such section as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.]

* * * * * * *

VII. ADDITIONAL AND DISSENTING VIEWS

ADDITIONAL VIEWS

We strongly support the underlying goal of H.R. 10, the Comprehensive Retirement Security and Pension Reform Act of 2001, to provide a secured retirement for the working men and women of this country. This goal is shared by Members of both parties and is reflected in the level of bipartisan support this legislation has received. Many of the provisions that were included in the original bill in the last Congress, H.R. 1102, are noncontroversial, while others have been improved since the initial date of introduction of the bill. Consequently, H.R. 10 is a more balanced bill than the previous versions. However, we remain concerned about the distributional effect of the benefits under the bill, as well as the lack of strong incentives for small employers to establish plans for their employees.

This legislation provides us with a unique opportunity to respond to the pressing need for adequate and secured retirement savings for all workers. However, the legislation, in its current form, fails to accomplish this goal. Unlike their high-paid counterparts, low- and moderate-income workers would receive little or no direct help in securing adequate retirement savings under the bill. Because there is so much work left to be done in this area, and we must begin now. We cannot allow this opportunity to pass us by.

H.R. 10 should provide additional incentives for increased retirement savings by rank and file workers, as well as additional incentives for small businesses to offer pension plans to their workers. These are two areas which continue to loom over us with an added sense of urgency as we face the imminent retirement of many baby boomers. A significant number from this group will face retirement with no financial resources other than Social Security. They will be forced into a retirement of poverty.

H.R. 10 would make many changes to our current pension system, a system built on the assumption that Social Security must be supplemented by other sources of savings such as employment-based pensions and personal savings. Recent studies have shown that high-paid workers are far more likely to have additional retirement savings. Therefore, we must remain committed to enacting legislation designed to bring more balance into our current system. Adequate retirement savings is important for all working Americans.

High-income workers who are currently saving the maximum permitted under our pension laws would receive great benefits from the provisions contained in H.R. 10. Such provisions would increase the limit on annual contributions to a defined contribution plan to $15,000, or annual additions of up to $40,000 for such plans. Workers who are age 50 or older would be able to make an annual contribution of $20,000. Workers participating in a defined benefit plan would receive an annual benefit of up to $160,000. These amounts would increase over time since they would be indexed for inflation.

We believe the option to save for retirement must be offered to all workers. This option is too fundamental to creating a secured retirement not to be made available to everyone in our workforce. We must ensure that no segment of our workforce is excluded from the opportunity to secure their retirement.

While H.R. 10 provides significant opportunities for those workers who can most afford to, and currently do, save the maximum amount allowed, it provides few or no opportunities to low- and moderate-income workers. We must continue to work together to improve this aspect of the bill. The pressure to save adequate amounts for retirement affects all workers. We must be committed to responding to these needs in a fair manner.

The first amendment offered by Rep. Richard Neal, and defeated on a party-line vote, would have added an incentive for low- and middle-income workers either to begin saving in a pension plan or to increase their savings for retirement. The amendment would have added to H.R. 10 a Retirement Savings Account (RSA) credit, an important element needed to perfect the underlying bill.

This amendment would have been a good first step in addressing the balance needed in this legislation. It would provide a refundable credit to low- and middle-income workers who participate in either an employer-sponsored plan, or an Individual Retirement Account (IRA). The maximum credit would equal 50 percent of the annual contribution limit, up to $2,000. The credit would be available to all qualifying taxpayers whose adjusted gross income does not exceed certain specified limits.

The RSA proposal does not create a separate savings vehicle. Rather, it works with existing employer-sponsored plans and IRAs. This feature would provide simplicity and ease of administration for plan sponsors. The proposal is designed to promote significant savings among low- and middle-income workers who need it most.

The amendment is intended to provide some help for our most vulnerable workers to save for their retirement. Because many of these workers have not yet begun to save for retirement, we believe a 50 percent credit would go a long way in encouraging them to take that important step. Many of these workers will begin with small account balances, but evidence has shown that the benefit of compounded interest, good investment returns, and a growing account balance will eventually win these workers over to the rewards of continuing to save.

This amendment is necessary for us to meet our goal of a secured retirement for all workers. Low-income workers can be brought into our employment-based retirement system only through some method other than the current "do-it-yourself" approach. Evidence confirms that our current system has failed this group of workers. Currently, the median retirement account balance for workers who earn less than $10,000 is a mere $7,500. This represents total savings, outside of Social Security, that must finance their many years of retirement. The numbers are not much better for workers who earn between $10,000 and $25,000. The median account balance for this group is a mere $8,000.

It is clear that our current system is working very well for high-income workers, and this bill would ensure that these workers do even better. The median account balance for workers who earn $100,000 is $93,000. More important, this generally is not the only source of retirement savings for this group of workers.

In addition to inadequate savings, actual participation in employer-sponsored plans is low among low- and middle-income workers. Recent statistics reveal that the participation rate for workers who earn between $10,000 and $25,000 is 25 percent. However, it is clear that participation increases with income. Workers who earn between $25,000 and $50,000 have a participation rate of fifty-eight percent. These numbers tell us that among low-income workers, 3 out of every 4 workers do not participate in a pension plan. This paints a very grim picture for these workers and their retirement. If we fail to enact legislation that would address these needs, we would have failed these workers.

H.R. 10, in its current form, would continue this skewed distributional impact of our pension system. Under the bill, 76.9 percent of the benefits from contribution limits and benefit increases would accrue to the 20 percent of workers with the highest incomes. On the other hand, the 20 percent of workers with the lowest incomes, less than $14,000, would receive 1 percent of the benefits. We must make take every step necessary to turn this around. We cannot afford to enact legislation that would leave any worker behind.

The refundable aspect of the RSA credit is a key feature in reaching this group of workers. We believe this credit would do a better job of bringing more low- and middle-income workers into our current retirement system. Receiving a credit of up to $1,000 would go a long way in enabling these individuals to continue contributing annually to their pension plans. We believe the RSA proposal would have accomplished the goal of extending to all American workers the opportunity to establish a more financially secured retirement.

The second amendment offered by Rep. Neal would have provided additional incentives to small businesses to offer pension plans to their workers. The incentives would have been provided through two tax credits for small employers. This amendment also was defeated along a party-line vote.

The amendment would provide a 50 percent tax credit to small employers for up to $2,000 of their start-up costs associated with establishing and administering pension plans for their employees. This credit would be available for the first three years of the plan. The amendment also would provide eligible small employers with a 50 percent tax credit for certain employer contributions, up to 3 percent of compensation, made to a plan on behalf of its non-highly compensated employees.

It is critical that we improve plan sponsorship among small employers because this is an important link to expanding coverage for workers currently without coverage. Small employers (100 or fewer employees) currently employ 38 million workers, yet less than 33 percent of these businesses offer a retirement plan. These workers deserve the same retirement security as their counterparts who work for large companies, but pension coverage for these workers continues to lag far behind coverage for employees of large businesses.

In a recent Small Employer Retirement survey conducted by the Employee Benefit Research Institute (EBRI), 65 percent of small employers not currently offering a pension plan listed the availability of tax credits as a significant factor in their decision on whether to offer a pension plan. The availability of tax credits was second in significance only to an increase in business profits. Sixty-five percent is a very substantial number. With this compelling evidence, we are convinced that adopting the tax credits included in the Amendment is the right thing to do.

We are all aware of how small employers struggle in this business economy to attract and retain quality employees. They can succeed in this effort only if they can compete effectively with large businesses. The ability of small employers to offer pension benefits is an important element in this process and is as valuable to them as it is to large businesses. The unique challenges small employers face make effective competition more difficult. We must do what we can to provide a level playing field for all businesses in the retirement benefits area.

In its current form, the legislation would fail to provide a secured and adequate retirement for all Americans. In addition, the bill can do more to expand pension coverage to the employees of small employers. We must continue to work in a bipartisan manner to meet these goals.

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JIM MCDERMOTT.
ROBERT T. MATSUI.
RICHARD E. NEAL.

DISSENTING VIEWS

Although the idea behind H.R. 10 is to expand pension availability to low- and moderate-income workers, this bill misses its target completely. Nearly 70 percent of the IRA contribution changes accrue to taxpayers in the top 20 percent income group while only 0.1 percent of the IRA provisions accrue to workers in the bottom 20 percent income group. The provisions in the bill with respect to the pension portability and Section 415(b), multi-employer pension plans are welcome changes. However, these changes comprise less than 2 percent of the bill's total cost. This is not enough to offset the potential limits H.R. 10 imposes on access to pensions for small business employees.

The Washington Post says it best in the attached opinion editorial (Sunday, April 29, 2001), "A Miserable Pension Bill." I agree with the editorial that this bill ought not pass.

A MISERABLE PENSION BILL

The House Way and Means Committee has approved still another tax cut bill, the third this year. Unlike the first two, this one is relatively small, was not proposed by President Bush and has strong bipartisan support. The House is expected to pass it overwhelmingly this week. But that's unfortunate, because the bill would not produce the healthy result its sponsors suggest.

The bill, is presented as a way of increasing the retirement savings of the middle class. But in fact the tax savings, an estimated $52 billion over 10 years—would go mainly to people whose incomes already permit them to save a great deal. The committee rightly observes that too many workers approach retirement with insufficient savings; half of all private-sector workers lack pension coverage. But most of them will continue to lack it if this bill is passed. Those who already have the most coverage will be eligible for more; that will be the main effect.

The bill would significantly increase the amounts of money that can be set aside each year in tax-favored individual retirement and 401(k) accounts. An estimated three-fourths of the benefit of the bill would go to taxpayers in the highest income quintile, and two-fifths would go to the highest income 5 percent. Democratic efforts to broaden the bill to benefit lower-income taxpayers failed. The bill also contains provisions that critics think would induce small employers to reduce pension coverage rather than expand it, as the sponsors suggest.

This one won't break the bank, but neither is it likely to increase savings that much. For the most part, it will confer in the name of savings a tidy tax break on people who were going to save anyway. It ought not to pass.

PETE STARK.